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HOUSING LEGAL DIGEST

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"The housing problem is intimately related to tax policy not alone in providing funds for subsidies, but in the extent and character of the taxes levied on real estate to meet ordinary municipal expenditures."

Foreword, "Local Taxation and Housing".

(See LEGAL COMMENT)

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

HOUSING LEGAL DIGEST

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The Editors of the HOUSING LEGAL DIGEST endeavor to present as completely and impartially as possible material relating to housing legal problems: but they assume no responsibility for opinions expressed herein and no inference may be drawn as to their agreement or disagreement with viewpoints expressed.

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DECISIONS

BANKRUPTCY - TAXATION - REORGANIZATION PROCEEDINGS

(In re 168 Adams Building Corporation, District Court, N. D. Illinois, E. D., 27 Fed. Supp. 247)

A bankruptcy court may not review the assessment of property of debtor which has been duly made by proper authorities, even though assessments are grossly excessive. It is not authorized to review factual reasonableness of assessment duly made by assessing officer. The rule of res judicata requires bankruptcy court to recognize official action by quasi-judicial or quasi-administrative local political officer who, following statute prescribing his duties, determines value of property within district and officially makes assessment of value thereon.

The debtor herein is an Illinois Corporation whose business it was to operate a building in Chicago. The building was erected by irresponsible promoters on borrowed money in the late twenties and after the 1929 crash they abandoned the enterprise. They also forfeited the corporate charter and took no steps to protect those who held bonds under the first and second mortgages or who had liens, judgments, or other claims against the property.

A suit was brought in the state court to foreclose the mortgage. It was contested that the mortgage was upheld and the foreclosure decree sustained. While such suit was pending the state court appointed a receiver. Subsequently proceedings were begun pursuant to section 77B of the Bankruptcy Act, 11 U.S.C.A. 207. The proceeding under this section had reached a stage where a plan of reorganization had received the endorsement of all creditors and stockholders and had been approved by the court.

Neither the receiver nor the trustee in bankruptcy had been able to operate the business at a profit due to the large and excessive taxes annually assessed against the property. Under the reorganization plan the bondholders under both mortgages and the creditors had surrendered their creditor claims and status and accepted stock in a new company. The accumulated taxes now amount to about \$500,000, and hardly any of it has been paid except what the trustee has paid in on any accumulated moneys received.

This claim is for general taxes for the years 1928 to 1937, inclusive. The objection is that the taxes are based upon assessments which are so excessive as to be fraudulent in fact and in law.

The court held that it had no authority to disallow or reduce the claim for the reason assigned. It found that the failure to pay the taxes had not been wilful, but was due to debtor's inability to obtain revenue from the property sufficient to pay the taxes. Also that the failure to pay all the taxes is due to the fact that the property is assessed at a sum so high that taxes thereon can not be paid from the revenue of debtor, which has no other property out of which it can make payments. The court concluded with these brief conclusions:

"The court of bankruptcy is without authority to reject or reduce a claim filed by a subdivision of a state (a county or city) for unpaid taxes based upon an assessment duly made by the proper municipal officer, solely on the ground that the assessment of value is excessive.

"Under section 64a of the Bankruptcy Act, 11 U.S.C.A. Sec. 104 (a), the court may receive proof and determine whether the taxing officers have acted beyond their jurisdiction or failed to take certain necessary steps prescribed and examine proof to ascertain whether the taxes levied correspond with the claim presented. The court may also ascertain whether any part of said tax has been paid and determine how much interest is due or should be allowed.

"Sec. 64a does not authorize the court of bankruptcy to review the factual reasonableness of an assessment duly and timely made by the assessing officer.

"While the authority granted under section 64a is not included in the amendment to the Act authorizing reorganizations of debtor corporations (sec. 77B), I am convinced that the court would have of necessity, and by implication, the same authority to pass upon similar tax claims. In other words, the same general equity power exists, whether the debtor be in bankruptcy for reorganization or for liquidation.

"In conclusion I might say, the facts in the instant case cry loudly for relief. Notwithstanding a desire so to do, courts must recognize not only the limits of their jurisdiction, but the futility of reviewing assessments made by local officials who in the performance of difficult duties are benefited by factual information not so fully and adequately obtainable by a court of bankruptcy. There are practical reasons which were pointed out in a case quite different in fact (*Giles v. Harris*, 189 U.S. 475, 23 S.Ct. 639, 47 L.Ed. 909) why we must leave certain questions solely to the determination of local officials, created to settle them. To illustrate: This court can not review questions

settled by a state court of competent jurisdiction. The doctrine of res judicata forbids. The reasons back of the rule of res judicata call for our recognition of official action by a quasi-judicial or quasi-administrative local political officer like an assessor, who, fully following the statutes which prescribe his duties, determines the value of the property within his district and officially makes the assessment of value thereon. . . .

"Undoubtedly the assessment of real estate in a city like Chicago is most perplexing. Exact justice is quite impossible. But the debtor herein has only one business, namely, operating an office building. When its revenues fail by \$30,000 a year to pay the taxes assessed against it, there can be but one outcome for its owners. In truth and in fact the assessor is demonstrating the truth of the age-old observation, 'The power to tax includes the power to destroy'.

"This was never meant to apply to business generally. It should be limited in its application to industries which are subject to regulation--to businesses like the liquor business, which have possible evils attending their transaction. As Justice Holmes said in *Panhandle Oil Co. v. State ex rel. Knox*, 277 U.S. 218, 223, 48 S.Ct. 451, 453, 72 L.Ed. 857, 56 A.L.R. 583, 'The power to tax is not the power to destroy while this Court sits'.

"I suggest that the trustee again appeal to the assessor and restate his position.

"If specific relief be unobtainable and the debtor be put to death by its taxes, there exists but one alternative--to await until the evils consequent upon such action so impair the credit of Chicago real estate outside the state or city that political action changing the situation will follow the swelling demand of property owners.

"The objections to claimant's claim based on the asserted over-assessment of debtor's property must be and they are overruled. The claim will be allowed with simple interest at five per cent from the date when demand for its payment was duly made."

BANKRUPTCY

(In the matter of James McRae Andrews, Debtor, District Court of the United States, Southern District of Texas, Brownsville Division)

Holding that debtor to HOLC unable to rehabilitate his loan.

In a bankruptcy proceeding the court entered an order on December 30, 1938, requiring the debtor to pay Regional Agricultural Credit Corporation the full amount of its debt with interest and to pay HOLC the full amount of taxes and premiums advanced by it, principal and interest since March 12, 1934, amounting to \$709.44, and interest thereon. The order further required the debtor to pay HOLC \$1,000 from the proceeds of the 1938-1939 crop then matured, after payment in full of Regional Agricultural Credit Corporation. It further provided that if he failed to make the payments to HOLC in the time required HOLC might proceed to foreclose its mortgage without further order of the court.

In July 1939, the debtor filed a motion, supported by affidavits, for an order amending the order of December 30, 1938, and extending the time in which HOLC might foreclose. The application recited that debtor had only received from the sale of fruits harvested on his property \$1,118.56, that since the previous order he had paid RACC the full amount of its debt, that he had paid taxes totaling \$476.35, that in making said payments he had paid a sum in excess of total receipts from the sale of fruits on the property, that the 1938-1939 fruit crop season and marketing conditions were such that prices reached the lowest figure ever known in the Rio Grande Valley, dropping to an unprecedented price of \$1.00 per ton, that he had reason to believe that marketing conditions were on an upward trend and that prices would be better for the 1939-1940 season and that if so, he could by application of the receipts and entire sale of his fruit crops for the next season rehabilitate his loan from HOLC.

In overruling the debtor's application the court said: "This motion is opposed by creditor, Home Owners' Loan Corporation, who points out that although two fruit crops have been harvested and sold from the land securing creditor's debt, not one dollar has been paid to creditor since October 1937; that since the date of creditor's loan (repayable in monthly installments of \$48.75, beginning April 12, 1934) debtor has paid on said loan less than \$476.00 and is now delinquent in the sum of \$2,561.90, of which \$921.03 is delinquent interest; that the original principal of the loan was \$5,271.88, and the debt is now \$6,617.01, which last named sum includes \$555.42 taxes and \$111.48 insurance premiums.

"The record reflects that prior to the order of December 30, 1938, a full hearing was held before Judge Kennerly. The conditions recited by debtor are appealing and he is entitled to every consideration possible. It has become clearly apparent, however, that there is no reasonable hope of his rehabilitating himself; and the further postponement of the foreclosure of the lien of creditor, Home Owners' Loan Corporation, might seriously impair such lien. The Court is therefore of the opinion that debtor's motion for modification of the order of December 30, 1939, and for further extension of time within which to meet the requirements of such order should be denied."

BUILDING RESTRICTIONS - INJUNCTION

(Sisk v. Richards, et al., Court of Civil Appeals of Texas, Galveston, 130 S.W. 2d 1076)

Where the original grantors and developers of subdivision as well as plaintiff and other owners of property therein had permitted such violations of building line restrictions as constituted an abandonment of originally intended general plan, plaintiff was not entitled to an injunction restraining defendant from building in disregard of the building line restriction.

This appeal is from a judgment refusing the appellant a temporary injunction against the appellees, whereby he sought to have them refrained from building the house of defendant, G. B. Magee, nearer than thirty feet to the front property line of the lot described in petition.

The court found the following facts to exist. It found that the original developers and grantors of this building subdivision had intended to create a general plan and building scheme by placing in the deeds to purchasers of lots certain restrictions, among which was a provision that residences should be located at least thirty feet from the front property line of the lot. It further found, however, that numerous violations of these restrictions were permitted; that no apparent effort had been made to enforce such restriction; that owners of corner lots had the right and privilege to decide for themselves which street line would be their front property line; that the plaintiff himself had violated the building restriction line and that he had allowed, without protest, other houses in his immediate neighborhood to be built in violation of these restrictions. It was also found that it would be impossible for defendant to build his house if it were placed thirty feet from the property line, because the lot is not wide enough.

The court held that from this evidence the plaintiff had waived whatever right he may have had to force the defendant to build his house thirty feet from the front of the property line and that the plaintiff was not entitled to a temporary injunction and had an adequate remedy at law.

The court said; "As indicated supra, the cause for the writ was determined adversely to the appellant, not on account of any finding that he had an adequate remedy at law, but on the utter absence of a factual-basis for the harsh remedy he sought; in other word, he having completely failed on the facts to show that he was entitled to the injunctive-relief, no question of whether there existed an adequate remedy at law was really left as a material one." Article 4642, Revised Civil Statutes of 1925; Hamilton v. Davis, Tex. Civ. App., 217 S.W. 431; 24 Tex. Jur., Pages 68-83.

"In the next place, the original grantors and developers of the Addition, as well as the appellant himself and other owners of property therein, having, under the quoted findings that must be accepted here as stating the established facts, permitted such violations of the building-line restriction as constituted an abandonment of any originally intended general plan to the contrary, no right to injunction was established. *Curlee v. Walker*, 112 Tex. 40, 244 S.W. 497; *Baker v. Henderson*, Tex. Civ. App., 125 S.W. 2d 660; *Green v. Gerner*, Tex. Com. App., 289 S.W. 999; 12 Tex. Jur., page 173, section 108."

COVENANTS - INJUNCTION - DISCRIMINATION - CONSTITUTION

(*Addesleigh Park Homes, Inc., v. Bouchey, et ux.*, Supreme Court, Special Term, Queens County, 13 N.Y.S. 2d, 209)

A permanent injunction to prevent the defendants from advertising through signs placed on their property that it was for sale or rent to colored people will not be granted, where there is no restrictive covenant involved and no legal restriction on defendants' power to sell to colored people, even if defendants' motives were to injure plaintiff.

This action was brought to obtain a permanent injunction to prevent the defendants from advertising through signs placed on their property that it was for sale or for rent to colored people. There were no restrictive covenants involved and it is conceded by all counsel that there is no legal restriction to prevent the defendants from selling and conveying their property to colored people.

It appears that the motives of the defendants were not of the best and they intended to injure the plaintiff by such advertisement, but they had a legal right to advertise their property as they did. The Court said that "The Constitutions of the United States and of the State of New York and our law prevents discrimination against any person because of race, religion or color, and the action of the plaintiff seeks in effect to obtain an adjudication which would bring about the very discrimination which our law prohibits."

The court refused to grant a permanent injunction.

DEEDS - COVENANTS - INJUNCTION

(Cejka v. Korn, et al., St. Louis Court of Appeals, Mo., 127 S. W. 2d, 736)

An amended petition which alleged that restrictive covenants sought to be enforced against defendants were similar to covenants in plaintiff's deed and that their title was derived from a common grantor, was not equivalent to an allegation that restriction on defendant's land existed for benefit of plaintiff's lot so as to warrant an injunction restraining use of defendant's land in violation of alleged restriction.

The plaintiff filed this suit in equity and alleged that she was the owner of certain real property, and that defendant Augusta Korn was the owner of certain other described property located in St. Louis, Missouri, and that the defendant and her husband and Mike Korn, a builder, all defendants, were attempting to alter a garage situated on the rear of the lot of the defendant Augusta Korn so as to make it adaptable for use as a store or other commercial purpose, contrary to certain alleged restrictions upon the lot. Plaintiff asked for an injunction to restrain defendants from proceeding with the work, and their using the property, when altered, for commercial purposes.

When the case first came on for hearing the plaintiff appeared but not the defendants and the court found in favor of the plaintiff. The defendants did not file a motion for a new trial. A few months later, at a subsequent term, defendants filed a motion for a writ of error coram nobis and asked to present their side of the case and have plaintiff's judgment set aside. This motion was overruled but defendants did not appeal. Then a year from the first trial defendants sued out this writ of error upon which they claim that the judgment which plaintiff received fails to state facts sufficient to constitute any cause of action in equity against them.

Plaintiff below, in her amended petition alleges that she is the owner of a lot, and that the defendant Augusta Korn is also the owner of a lot in St. Louis, and that the title to each lot was by mesne conveyances from the Loughborough Realty and Investment Company, a corporation, as common grantor. Plaintiff states that there is a bungalow on her property, and a bungalow and garage on defendant's property. It is further alleged that defendant acquired her property from Lillian Korn which was subject to restrictions of record contained in a deed from one Cunningham to the aforementioned realty company which conveyance restricted buildings except for "dwelling purposes for one family only", but garages could be built if it was of brick or tile construction. Other restrictions were also mentioned as to the type of construction of the houses.

The petition reiterates that the common source of title to plaintiff's and defendant's premises is the Loughborough Realty and Investment Company, and that this company placed the restrictions upon these properties, as well as upon other lots in this settlement for the benefit of its grantees and assigns and that the contemplated action of defendant in altering her garage is in violation of said restrictions, and if permitted will injure and damage plaintiff's property unsuitable and undesirable as a private residence.

The court said that "restrictive covenants in a deed to be enforceable by a third party must be shown to have been put on defendant's property for the benefit of the land owned by plaintiff, and in determining this question we must endeavor to arrive at the party's intention who originally created the restriction. *Toothaker v. Pleasant*, 315 Md. 1239, 288 S.W. 38; *Coughlin v. Barker* 46 Mo. App. 54".

Plaintiff alleged that the lot owned by defendant and the lot owned by her are subject to similar restrictions. However, the court found that the plaintiff's property was outside of the district to which restrictions set out in the deed which the realty company made and which property is now owned by defendant.

The court then said: "In this situation we have nothing left in plaintiff's petition excepting the charge that plaintiff's lot and defendant's lot are subject to similar restrictions. As we have stated above, the mere fact that plaintiff's amended petition alleges that the covenants sought to be enforced against defendants are similar to the covenants in plaintiff's deed, and that their titles are derived from a common grantor, is not equivalent to an allegation that the restrictions on defendant's land existed for the benefit of plaintiff's lot.

"Similar or identical restrictions are not sufficient of themselves to establish the existence of a general scheme, or that the restrictions in the deed under which the plaintiff claims were intended for the benefit of any other lot or lots conveyed by the common grantor. It requires the joint intent of the grantor and grantee, and as between them the instrument or instruments exchanged and forming a part of the transaction constitute the final and exclusive evidence of the intent of the parties and of the covenants entered into. *Pierson v. Canfield*, Tex. Civ. App., 272 S. W. 231."

Therefore, since the charges by plaintiff only amounted to the fact that the restrictions sought to be enforced were inserted in some deeds forming links in both defendant's and plaintiff's claim of title, it is insufficient to show that the covenants were intended for the benefit of plaintiff and enable her to restrain their violation.

EMINENT DOMAIN - HOUSING AUTHORITIES - CONDEMNATION PROCEEDINGS - NECESSARY PARTIES

(Municipal Housing Authority for City of Yonkers v. Phipps, et al., Supreme Court, Appellate Division, Second Department, 13 N.Y.S. 2d 640)

After proceeding was brought by Municipal Housing Authority for condemnation of realty, proceeding was "pending" after service on mortgage of premises and order for possession and demolition of property was properly granted therefor. Mortgagee of the premises was a "necessary party" to the suit.

This was a proceeding in the matter of the application of the Municipal Housing Authority for the City of Yonkers against defendant and others, relative to acquiring by eminent domain title to and possession of certain lands and premises situated in the City of Yonkers, State of New York, pursuant to the power and authority of the Municipal Housing Authorities Law of the State Housing Law. The defendant appealed from an order granting possession and demolition of the real property.

In a memorandum opinion by the court denying the appeal by the owner of the property, it said that "It is conceded that the mortgagee of the premises, a necessary party, had been served prior to the application for the order appealed from. The proceeding for condemnation was, therefore, pending and the order was properly granted."

EMINENT DOMAIN - MUNICIPAL CORPORATIONS - DAMAGES - JURISDICTION OF COURTS

(Grunewald, et al. v. City of Chicago, ___Ill.____, 21 N. E. (2d) 739)

Landowners, whose property was damaged by construction work carried on by city, could elect to sue at law for damages to their property or proceed in mandamus to compel proper officers to bring proceedings under Eminent Domain Act. Satisfaction of claim, however, in one of the modes of recovery would constitute a bar to the other. Suit for damages after completion of public improvement was a common-law action and was governed by rules of procedure and jurisdiction on appeal as other such actions for damages are governed, and was not an action under the eminent domain statute, and therefore the Appellate Court and not the Supreme Court had jurisdiction of direct appeal.

Plaintiffs brought an action for damages to their lands by reason of a change of grade of streets, sidewalks and an alley in the

construction of an approach to a bridge in the City of Chicago. They recovered a verdict and an appeal was taken to the Appellate Court where the appellees filed a motion to transfer the cause to the Supreme Court on the ground that the action is in the nature of a condemnation suit and, under the Eminent Domain statute, the appeal should have been taken to that court. The Appellate Court for the First District in 18 N. E. 2d 708, granted the motion and transferred the record to the Supreme Court.

The case was tried as any other suit at law for damages to real property. The Appellate Court's view that this case was one within the jurisdiction of the Supreme Court on direct appeal was apparently based on the ground that the proceeding was one governed, as to appeals, by the law relating to cases in eminent domain. Appellees contended that notwithstanding this was a suit against the city for damages to their property it is also a suit in the nature of a proceeding under the Eminent Domain law, and appeal from the judgment of the circuit court should have been taken directly to this court. Appellant contended that this was a common-law action for damages and that this court had no jurisdiction on direct appeal.

"Under section 13 of article 2 of the constitution, Smith-Hurd Stats., private property may not be taken or damaged for public use without just compensation; such compensation, when not made by the State, to be ascertained by a jury. Section I of the Eminent Domain Act, Smith-Hurd Stats. c. 47, Sec. 1, makes the same provision.

"Numerous cases are relied upon by appellees as supporting their contention that this cause should have been appealed directly to this court. *Chicago & Eastern Illinois Railroad Co. v. Loeb*, 118 Ill. 203, 8 N.E. 460, 465, 59 Am. St. Rep. 341, so cited, was an action for damages sustained from the operation of defendant's railroad. The trial court entered judgment for the plaintiff which the Appellate Court affirmed. This court reversed the judgment on the ground that the owner, at the time the railroad was constructed, having a right of action for all damages that were or might be caused by the operation of the railroad, the plaintiff, his alienee, had no right of recovery. While it was in the opinion said: 'The action for damage may be regarded as in the nature of one kind of condemnation proceeding', it was not held that the action was under or governed by the Eminent Domain act, either as to its trial or as to jurisdiction on review. The cause came to this court from the Appellate Court."

In holding that the judgment of the Appellate Court should be reversed the court said: "Appellees had a right to sue at law for damage to their property or to proceed in mandamus to compel the proper officers to bring proceedings under the Eminent Domain Act. *People v.*

Kingery, supra. They had a right to elect the remedy they thought best suited to the end sought, and satisfaction of the claim in one of the modes of recovery constitutes a bar to the other. Bradner Smith & Co. v. Williams, 178 Ill. 420, 53 N.E. 358.

"It is the duty of a municipality constructing a public improvement, before making the same, to settle damages, if any, to adjacent property not taken by the improvement, and if such settlement can not be made, to institute proper proceedings under the Eminent Domain Act to ascertain such damages, and the officer or officers having control of the improvement may be compelled by mandamus to institute such proceedings. People v. Kingery, supra. The property owner is not confined, however, to mandamus proceedings. He may, if he chooses, bring an ordinary action at law for damages, against the city, after the improvement is completed. Such a course the plaintiffs have pursued in this case. Such, however, does not make the suit so instituted an action under the Eminent Domain statute. It is nevertheless a common law action for damages and is governed by rules of procedure, and jurisdiction on appeal, as other common law actions for damages are governed. No question involving the Eminent Domain Act is presented by this record, nor is any question raised which gives this court jurisdiction on direct appeal.

"The judgment of the Appellate Court is reversed and the cause remanded to that court, with directions to pass upon the merits of the case on appeal from the circuit court."

EMINENT DOMAIN - RESTRICTIVE COVENANTS - SUBDIVISION OF LOTS
(Anderson et al. v. Lynch, et al., ___ Ga. ___, 3 S.E. (2d) 85)

Where covenants restricted use of all lots in a subdivision to residential purposes and the county purchased one of the restricted lots for use as a public road, the owners of other lots did not have such interest or ownership in that lot as would entitle them to damages or compensation because of such use.

Mr. Anderson and others, the owners of residential lots in a subdivision known as Garden Hills, filed a suit in equity against Henry Grady Lynch, who also owned a lot in this subdivision, and against Fulton County and the county commissioners. They asked for an injunction to prevent the defendants from violating stated covenants and building restrictions alleged to be applicable to all the lots in the subdivision, including the lot of Lynch, which he has agreed to sell to Fulton County for use as a public road. This action was treated as a class suit as it

appeared that over 200 other property owners are situated in the same subdivision.

All of the property owners in this subdivision acquired their properties from a common grantor. The deed under which Lynch holds his property contains the following, among other covenants:

"No use to be made of said property, or any part thereof, which would constitute a nuisance, or injure the value of any of the neighboring lots . . . (4) Said property shall not be used for store, cemetery, hospital or sanatorium purposes; and shall be used for residence purposes only . . . (9) Grantor reserves the right to lay and maintain, or authorize the laying and maintaining, of any property improvements or public utilities on any lot or in any of the streets or alleys of the property known as "Garden Hills", without compensation to any lot-owner. (10) In the event of a violation of any of the above restrictions, the grantor, its successors or assigns, or any lot-owner in said Garden Hills, shall have the right to enforce a full compliance with same by legal proceedings, at the expense of the owner violating, or permitting the violation of any of said restrictions."

The Garden Hills subdivision is a well-developed and exclusive residential community, with over 200 homes having been built upon the faith of the foregoing restrictions. Defendant Lynch conceived a plan to sell his lot to Fulton County for the purpose of enabling the county to build a highway through it and which will connect two other roads. In order to build this highway a bridge would have to be built over a part of it and the grade of another portion cut down, thus changing the natural beauty and topography of the lots adjacent thereto, and destroying the privacy to the side and rear of plaintiffs' home. The plaintiffs also allege that this highway would be a short cut for negro inhabitants, who live nearby, to wander into this subdivision, thereby making it less desirable for residential purposes.

The petition further alleges that there is no emergency for the construction of said road and that if the acquisition of the property by Fulton County be achieved under the power of eminent domain the county has not complied with the laws of the State of Georgia in connection with its rights of eminent domain and has not complied with certain stated code provisions. The court in deciding that the plaintiffs' action could not be sustained said:

"One of the questions for decision is whether the restrictive covenants contained in the deed to Lynch created, or conveyed to the plaintiffs, a property right or interest in the lot of this defendant. It seems that this identical question has not before been presented to this court for determination. Restrictive agreements of this nature are

sometimes spoken of as covenants running with the land, and sometimes as creating reciprocal negative easements. Still other terms have been employed. *Hancock v. Gumm*, 151 Ga. 667, 673, 107 S.E. 872, 16 A.L.R. 1003. Courts of other jurisdictions have taken directly opposite positions on the question stated. After a careful examination of the authorities, we think that the sounder view is that no such interest is conveyed. . . .

"In the present case, the plaintiffs contend, that, even if Fulton County has the right to acquire the lot of Lynch and appropriate it for the purpose of a road or highway, any action by the county to that end should be enjoined until the county has complied with the law as to condemning property, including notice to the plaintiffs with an opportunity to present their claims for damages. It could not be reasonably contended that the county would not have the right to condemn the property for a public road if the road would be of public advantage; and yet if the plaintiffs' other contentions were sustained, it is apparent from the petition that owners of other lots in the subdivision might assert claims in the aggregate of several hundred thousand dollars. . . . It could not be correctly said that this small lot which the county is about to use is the common property of all of the owners in the subdivision, and that the total value of the combined interests are to be taken into consideration and compensated before the county might be enabled to use the lot for a public purpose.

"As important as the question is, and with all deference to the eminent courts which have held to the contrary, we cannot escape the conclusion that the plaintiffs have no property interest in the lot owned by Lynch. The most that can be said is that the restrictive covenants on which they rely are enforceable as between the parties thereto and their successors with notice. They do not convey an interest in the land. . . .

"Furthermore, it is our opinion that these covenants, if construed as intended to burden the free right of the county to acquire and use the property of Lynch for the purpose of establishing a new public road, would be contrary to public policy and void. Let us suppose, for instance, that the deed to Lynch had contained in terms a restriction against such a use of this lot. Manifestly, the covenant in that case would be contrary to the public interest, and should be held void as against public policy; nor would the result be materially different if the terms and conditions which have been actually expressed should be taken as intended to exclude such use. According to the petition, the covenants are to continue in force for the period of fifty years. The contract will be construed as made for a legal rather than for an illegal purpose, whenever it may be reasonably so interpreted. *Virginia Bridge & Iron Co. v. Drafts*, 2 Ga. App. 126 (3), 58 S.E. 322. In view of this principle, and the long duration of these covenants, we are of the opinion that the restrictions should be construed as not intended to ap-

ply so as to prevent the county authorities from acquiring and using any of the lots for the purpose of a public road, or to prevent any one from selling or dedicating his lot for that purpose. . . .

"Even if the plaintiffs might sustain some damage by the establishment of this road, since they have no property interest in the land about to be used for that purpose, any damage sustained by them would be merely consequential or incidental, and they would not be entitled to notice or to insist upon a compliance with the law as to condemning property for such public purpose. County authorities proceeding to lay out a new road through the process of condemnation are to be governed by the law as stated in the Code, chapter 95-2, Section 95-201 et seq. *Commissioners of Roads and Revenues of Decatur County v. Curry*, 154 Ga. 378 (2), 114 S.E. 341; *Cook v. State Highway Board of Georgia*, 162 Ga. 84 (4), 132 S.E. 902; *Parrish v. Glynn County*, 167 Ga. 149 (2), 144 S.E. 785. By Section 95-203 it is provided that notice shall be given to persons 'residing on land through which said road runs'. In *Huff v. Conehoo*, 109 Ga. 638, 34 S.E. 1035, it was held that the manifest object of this section is to give owners of realty whose property is to be taken, a fair opportunity to present their claims for damages, and that 'Even if other persons are in any way injuriously affected by the establishment of a new road, the law does not contemplate that they shall have the notice provided for in this section.' If the county authorities had the right to condemn this land for the purpose stated, it was their privilege to acquire the land by private contract with the owner or owners, without resorting to the process of condemnation; and if they had the right to buy, the owner or owners necessarily had the right to sell

" . . . The plaintiffs alleged 'that there is no emergency for the construction of said road'. The authority of a county to lay out and establish a public road is not limited to an emergency. Nor is it essential that there should be a public necessity; but it is sufficient if the road will be of 'public advantage' (Code, Section 95-201), or public utility. *Barnard v. Durrence*, 22 Ga. App. 8 (2), 95 S.E. 372; *Neufville v. Robinson*, 43 Ga. App. 823, 825, 160 S.E. 552. The petition must be construed most strongly against the plaintiffs; and in the absence of allegations to the contrary, it must be presumed that the road will be of some public utility. In no possible view of the case did the petition state a cause of action, and the court properly sustained the general demurrer and dismissed the suit."

EQUITABLE LIENS - FHA INSURED LOANS

(In re Site for Public Park (Damage Parcel No. 25), in Borough of Queens, City of New York, Supreme Court, Appellate Division, Second Department, 13 N.Y.S. 2d 587.)

The FHA as guarantor of unsecured loans by bank and as assignee of judgment against borrower was not entitled to an equitable lien against realty to the extent that borrower who was in possession under a will which was subsequently set aside for fraud of borrower, had expended the money to improve the realty, and hence was not entitled to share in condemnation award under which city of New York took title.

This was a condemnation proceeding by the City of New York to acquire title to certain property for the purposes of a public park. Out of the money awarded there was \$2,900 awarded to Effie Royster and \$1,500 to the FHA. The appellant, Effie Royster, claimed that the FHA was not entitled to the \$1,500 awarded to them for the reason that they had no valid claim or lien upon the real estate in question, and the court so held.

The facts show that one Effie Norton, while trespassing upon and pretending to be the owner of real property under a will of one Annie Elam, who died on February 8, 1936, seized of the real property in question here, borrowed from the Morris Plan Bank a sum of money on her unsecured note. Of such amount she spent \$1,500 on improvements and repairs to the property here involved. At this time she knew that her title was being contested and as a result of proceedings instituted September 1, 1936, a decree was entered on December 17, 1936, vacating the probate of the will under which she had obtained possession. This decree found that she had been guilty of fraud, deceit, duress and undue influence in procuring the purported will. Later, under the owner's valid will, the appellant, Effie Royster, received the property, and finally ousted Effie Norton.

The Morris Plan Bank had obtained a judgment against Effie Norton for defaulting on her notes. This judgment was never docketed. The judgment was assigned to the FHA. When the City of New York took title to the property by condemnation, Effie Norton and the FHA each made separate claims therein, claiming an equitable lien for reimbursement for the improvements made during the time that Effie Norton was in possession under an invalid title.

The lower court found that \$1,500 of the Morris Plan Bank loans, which were guaranteed by the FHA, were actually expended for improvements and repairs on the property and awarded \$4,400 for the taking of that property as above indicated. It dismissed the claim interposed by Effie Norton.

The court held here that the FHA had no claim or lien upon the real estate so improved, and therefore not entitled to any part of the condemnation award. It further said that "The Federal Housing Administration's right (if any) in the damage parcel came through Effie Norton, a trespasser, to whom the Morris Plan Bank made the loans thus guaranteed by the Federal Housing Administration, \$1,500 of the proceeds of which loans were expended for improvements upon Effie Royster's property without her consent. Effie Norton had no equitable lien upon the property for the value of the improvements. *Woodhull v. Rosenthal*, 61 N.Y. 382, 396; *Wood v. Wood*, 83 N.Y. 575, 576, 581; *Warner v. Warner*, 199 App. Div. 159, 165, 191 N.Y.S. 612. Therefore, the Federal Housing Administration, which guaranteed the repayment to the Bank by Effie Norton of her unsecured borrowings, part of which was thus expended for improvements, had no equitable lien upon the property thus improved by Effie Norton, the trespasser (vide *Spruck v. McRoberts*, 139 N.Y. 193, 34 N.E. 896); and consequently has no right to any part of the award."

(Mr. Justice Carswell rendered a dissenting opinion.)

HOMESTEAD STATUTES - BANKRUPTCY

(In re Miller, District Court, S. D. California, Central Division, 27 F. Supp. 999)

The object of a California statute creating homestead is to protect homesteader and those dependent upon him in the enjoyment of a domicile not exceeding \$5,000 in value. Homestead statutes are remedial and where the courts can reasonably do so they should make secure to the claimant all the domiciliary protection and immunity which the homestead attaches to the title. Under the California law, a declaration of homestead executed by husband alone upon property held by husband and wife as joint tenants exempted the undivided one-half interest in property conveyed to wife as against trustee in bankruptcy of the wife, so that the entire property was exempt.

The bankrupt in this action has resided with his wife upon the real property which is the subject matter of this review since its acquisition by them, and are now residing on it. It was acquired by purchase by the Millers jointly through the medium of a valid joint tenancy deed. Five years later Miller, as husband and head of a family, duly made, verified and recorded a declaration of homestead under the laws of the State of California upon the aforesaid property. This was the only declaration of homestead executed by either the husband or wife.

"In the schedules annexed to the voluntary petition the bankrupt lists the real property as community property and alleges the

property to be of a value of \$4,250 and claims to be exempt under section 6 of the Bankruptcy Act of 1938 (Title 11, section 24, U.S.C.A.) and pursuant to sections 1237 to 1266 of the Civil Code of the State of California."

The trustee in bankruptcy objected to the setting aside of the aforesaid real property as a homestead, "for the reason that the bankrupt did not comply with the laws of the State of California on homesteads."

Upon exceptions filed by the bankrupt and also by the wife, who is also a voluntary bankrupt and who asserts and schedules the same claim to the homestead exemption as her husband, a hearing was held by the referee wherein it was conceded "that the declaration of homestead created a valid exemption as to the undivided one-half interest in said property conveyed to the husband as joint tenant."

"The referee, upon objections by a creditor, excluded proffered oral testimony by Mr. and Mrs. Miller that the property 'was purchased with community funds' and also to the effect that while the deed 'is joint tenancy in form, there was no intent to disturb or change the community character of the property,' and entered the order here under review, which allowed and set apart to the bankrupt homestead exemption 'from and only the undivided one-half interest in said land and water stock conveyed to said True Miller by said deed,' and which decreed that by reason of the omission and failure of Mrs. Miller to make or join in making the declaration of homestead, the undivided one-half interest conveyed to her by the joint tenancy grant deed of May 21, 1927, remained unaffected by the declaration of homestead filed by her husband and was not exempt from forced sale, and accordingly exemption was disallowed as to the undivided one-half interest in the property conveyed to Mrs. Miller as joint tenant with her husband."

The court properly upheld the ruling of the referee which excluded parol evidence of the source of the purchase money or the intent of Mr. and Mrs. Miller in taking title to the property.

However, it held that a declaration of homestead, executed by the husband alone, upon property held by the husband and wife as joint tenants, had the effect of exempting the undivided one-half interest in said property conveyed to the wife, as against the trustee in bankruptcy of the wife.

" . . . The object of laws creating and relating to the homestead is, in the words of the California Supreme Court in *Marelli v. Keating*, 208 Cal. 528, at page 531, 232 P. 793, at page 794: 'to protect the homesteader and those dependent upon him or her in the enjoyment of a domicile not exceeding \$5,000 in value, and to this end a liberal

construction of the law and facts will be indulged by courts'.

"Homestead statutes are remedial. In interpreting them the court should, if it can reasonably do so under the concrete factual situation, make secure to the claimant all the domiciliary protection and immunity which the homestead attaches to the title."

The paramount purpose of the homestead laws is to afford protection to the home against creditors. This purpose is only accomplished by extending execution or forced sale immunity to the limit of the law. Section 1260 of the Civil Code of California exempts homesteads selected and claimed by the husband to the value of \$5,000. If the husband here is required to relinquish and surrender to the bankrupt estate a portion of the homestead exemption he and his wife would be deprived of the protection to themselves and to their home vouchsafed by the statutes of the State of California.

"Since the 1929 amendment to Section 1238 of the California Civil Code, the 'property' from which a husband could select a homestead has been that 'estate' which vests in the claimant the immediate right of possession, even though such right of possession is not exclusive. *Watson v. Peyton*, 10 Cal. 2d 156, 73 P. 2d 906. This amendment obviously pertains to cotenancies, the most frequently used in California by married persons in acquiring real property for homesites being joint tenancies. In the case just cited, the court, speaking of the property from which a husband who is joint tenant with his wife may select and claim a homestead, described the character and extent of the right in this language (10 Cal. 2d at page 160, 73 P. 2d at page 908): 'It is such an estate that the husband has in property held in joint tenancy with his wife--a right of possession though not exclusive, but nevertheless a separate estate upon which he may declare a homestead. This estate covers the whole interest in the land, subject to the right of survivorship,'"

The court found that no act by Mrs. Miller could be construed as any relinquishment of the protective features vested in her by the laws of the State of California, and concluded that no part of the homesteaded property passed to the trustee in bankruptcy, and that any ratable apportionment of the homestead exemption between husband and wife is unauthorized by law.

MORTGAGES - FORECLOSURE - INADEQUACY OF PRICE

(HOLC v. Agnes Hadala and Frank J. Hadala, Court of Common Pleas, Lackawanna County, Pennsylvania)

Inadequacy of price at foreclosure sale as justifying the setting aside of the sale.

At the foreclosure sale of its \$3,264.74 mortgage HOLC bid in the property for \$269.22, the amount of the taxes and costs. The mortgagors petitioned for a rule to set aside the sale for gross inadequacy of consideration. In its answer to the petition HOLC averred its willingness to satisfy of record its mortgage and the judgment entered on the bond or note.

The court held that the \$269.22 bid price plus the satisfaction of the mortgage and judgment of \$3,264.75 amounted to more than the value of the property. The court therefore refused to set aside the sale. In so holding the court distinguished the case from HOLC v. Eiden, 329 Pa. 532, upon the ground that in the Eiden case the bid price plus the satisfaction of the mortgage and judgment amounted to \$8,000 less than the value of the property. The court expressly recognized the basic principles that the setting aside or confirmation of foreclosure sales is an exercise of sound discretion not to be abused by arbitrary or capricious action and that such inadequacy of price as works an injustice on the debtor or amounts to a fraud on him justifies the setting aside of a sale. The court, however, pointed out that in the case before it no evidence had been presented that another sale would "result in the likelihood of any better bids", and that there was nothing in the evidence "to show any movement of real estate of any extent in the vicinity of this property."

MORTGAGES - CONTRACTS - APPEAL AND ERROR - PUBLIC POLICY

(Council v. Cohen, Supreme Judicial Court of Massachusetts, Suffolk, 21 N.E. 2d 967)

Where mortgagee acquiring title by foreclosure executed agreement consenting to accept bonds of HOLC and small amount of cash and to release all claims against property, second mortgage subsequently taken by mortgagee without sanction of corporation was void as against "public policy". Where parties are not in equal fault as to illegal contract and where there are elements of public policy more outraged by conduct of one than of the other, relief in equity may be granted to the less guilty.

The plaintiffs seek to have declared void a second mortgage and the note secured thereby, given by them to the defendant, subject to a

first mortgage to the HOLC. The property in question had previously been mortgaged to the defendant by a first mortgage of \$10,000 and a second mortgage of \$1,400, and upon default the defendant acquired title by foreclosure of the first mortgage. Later one of the plaintiffs applied to the HOLC for a loan which was granted; the defendant agreeing to accept \$6,100 face value of the bonds of the HOLC and cash in the amount of \$23.44 in full settlement of all claims against the property. However, it appears that prior to this the defendant had refused to agree to the transaction with the HOLC unless the plaintiffs would execute a second mortgage to him, and it was finally agreed to do this in the sum of \$3,500. It is not clear whether the HOLC knew of this or not but in either event the transaction was not authorized. The plaintiffs paid interest on the second mortgage amounting to \$481.25. The principal sum was due in three years and, upon failure of the plaintiffs to pay, the defendant threatened to foreclose and this bill was brought alleging, among other things, that the second mortgage is illegal and void and against public policy in that it contravenes the policy and provisions of the HOLAct. There was nothing as between the mortgagor and mortgagee to invalidate the second mortgage except the question of public policy alleged in the bill.

The court found that the execution of the second mortgage was without the sanction of the HOLC and was contrary to the purpose and to the regulations adopted by the corporation and that it was contrary to public policy and void.

The court went on at length to state that it would take judicial notice of the provisions of the HOLAct, discussing the provisions for which the act was created and stating that "Nowhere in the act is there any expressed prohibitions against either the mortgagor giving, or the mortgagee or owner of property acquired by foreclosure receiving, a second mortgage subject to a first mortgage to the corporation. The corporation, in exchange for bonds or cash, must acquire a first mortgage or lien on the premises involved, and it is obvious that an owner by foreclosure, as was the defendant, in the event of redemption, must divest himself of his title in order that such a mortgage or lien can be acquired. The acceptance of bonds by a mortgagee or owner of foreclosed premises is entirely optional. *Thorne v. Edwards*, 147 Or. 443, 34 P. 2d 640. It is assumed in the case at bar that the defendant, as a part of the transaction, conveyed the premises in question to the plaintiffs."

Then it went on to discuss the term "public policy" by saying: "The term 'public policy' is not easy to define. The statement of Lord Brougham in *Egerton v. Brownlow*, 4 H.L.Cas. 1, 196, is generally accepted; that is, that public policy is that principle of law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good. The court should proceed with extreme

caution when called upon to declare a transaction void on grounds of public policy, and prejudice to the public interest should clearly appear before any such declaration is made. *Smith v. DuBose*, 78 Ga. 413, 435-439, 3 S.E. 509, 6 Am.St.Rep. 260."

The defendant being the owner of the property in question could state the amount he would be willing to accept for the reconveyance of the property to the plaintiff. He agreed to accept a certain amount from the corporation and to release all claims to the property. Ordinarily it would not be against public policy for some creditor of the plaintiffs other than the defendant to take a second mortgage subject to the first mortgage to the corporation; nor would it be against public policy for some other creditor, or one having a claim against the plaintiffs, to attach the plaintiffs' property subject to the first mortgage. But to permit the defendant in this case to go behind his representation that he would take the corporation's bonds in full settlement of his claim and obtain an advantage by way of a second mortgage may well defeat the primary purpose of the act itself. "It well may be that the corporation would never have consented to attempt to aid the plaintiffs if it had known of this agreement between them and the defendant for the execution of a second mortgage.

"Cases where the facts were not quite the same have generally indicated that a transaction of this character is against public policy and void, although the court in *McAllister v. Drapeau*, Cal.App., 85 P. 2d 523, where the cases are collected and discussed, takes a different view. Compare *Markowitz v. Berg*, 125 N.J.Eq. 56, 4 A2d 410. In our opinion it cannot be said that the ruling of the trial judge was wrong."

The court also allowed the plaintiff to recover the interest money he had paid and said: "It is well settled that 'courts will not aid in the enforcement, nor afford relief against the evil consequences, of an illegal or immoral contract . . . The general doctrine is subject to a qualification or exception as widely recognized and as thoroughly established as is the rule itself. That exception is that, where the parties are not in equal fault as to the illegal element of the contract, or, to use the phrase of the maxim, are not in *pari delicto*, and where there are elements of public policy more outraged by the conduct of one than of the other, then relief in equity may be granted to the less guilty'. *Berman v. Coakley*, 243 Mass. 348, 350, 137 N.E. 667, 668, 26 A.L.R. 92. . . . In our opinion the parties in the case at bar are not in *pari delicto*, and as was said in the case of *Berman v. Coakley*, 243 Mass. 348, at page 355, 137 N.E. 667, at page 671, 26 A.L.R. 92, 'relief will be afforded to the plaintiff as plainly the less offending of the two'. *White v. Franklin Bank*, 22 Pick. 181; *Meek v. Wilson*, 283 Mich. 679, 278 N.W. 731. See *Kneeland v. Emerton*, 280 Mass. 371, 378, 183 N. E. 155, 87 A.L.R. 1. Compare *Anderson v. Horst*, 132 Pa.Super.140, 200 A. 721."

NOTE: In *McAllister v. Drapeau*, Supreme Court of California, July 27, 1939, and in the *Dayton Mortgage and Investment Company v. Theis*, Court of Appeals of Montgomery County, Ohio, May 18, 1939, the courts rendered opinions similar with the opinion in the above case of *Council v. Cohen*. The facts in the three cases were similar to each other and the *McAllister v. Drapeau* case cites the cases of *Council v. Cohen*, and the *Dayton Mortgage Co. v. Theis* case and other cases where decisions have been similar to this one.

In *McAllister v. Drapeau* the HOLC was a party *Amici Curiae* and the opinion by the court is a very elucidating and an exhaustive one on the subject.

MUNICIPAL SERVICES

(*Jacob Sandness v. James E. Holst*, Supt. of Water Dept. of City of Mitchell, Circuit Court, Fourth Judicial Circuit, South Dakota)

If state statute does not give authority, a city operating a waterworks cannot by ordinance make water charges liens on realty; nor can it refuse service to a property unless and until bills of former owners or their tenants have been paid.

A tenant of HOLC property brought suit to obtain a writ of mandamus requiring the Superintendent of the Water Department of the City of Mitchell, South Dakota, to furnish water service to the property. The defendant had refused to furnish the service unless and until there had been paid a delinquent water bill incurred by a former owner of the property or his tenant. The defendant based the City's right to refuse the service on an ordinance containing a provision that "water bills . . . shall be a charge against the premises", and that the sending of water bills to the tenant on request of the owner "shall not release the owner of the premises from the charge".

The court held that since the state statute authorizing the City to operate and maintain the waterworks system contained no provision giving the City authority to pass an ordinance creating a lien upon real estate for unpaid water bills, the ordinance relied upon could not and did not give the City a lien and could not and did not authorize or entitle it to refuse to furnish water service to the property unless and until a water bill of a prior owner or his tenant had been paid. It therefore directed the issuance of the writ of mandamus. In so holding,

the court cited Linne v. Bredes, 36 Pac. (Wash.) 856, 6 L.R.A. (N.S.) 707; Covington v. Potterman, 17 L.R.A. (N.S.) 923 (Ky.); Farmer v. Nashville, 45 L.R.A. (N.S.) 240 (Tenn.) and a footnote in 28 A.L.R. 472, 486. The court distinguished the case of East Grand Forks v. Luck, 107 N.W. 393, 6 L.R.A. (N.S.) 198, by pointing out that in that case the liability had been created by statute.

TAXATION

(State ex rel. HOLC v. Pontius, County Treasurer, et al.
___Ohio___, 21 N.E. 2d 868)

Mandamus will not lie to compel a county treasurer to accept an amount in full payment of general taxes and special assessments and to compel county auditor to remove from general duplicate of realty taxes the charge of delinquent sewer rentals certified by the city. The proceeding was an attempt by relator to prevent collection of delinquent sewer rentals by mandamus and a plain and adequate remedy was available in ordinary course of law.

This was a mandamus proceeding by the state, on the relation of the HOLC, who sought to obtain a writ commanding the treasurer of Stark County to accept \$34.18 in full payment of the general taxes and special assessments as shown on the general duplicate of real estate taxes of that county and to give a receipt therefor. Also for an order requiring the auditor of that county to remove from the general duplicate of real estate taxes the amount of \$6.60 for delinquent sewer rental charges certified by the city auditor of Massillon, who was made a party respondent by leave of court.

"The treasurer pleads refusal to accept the payment of general taxes amounting to \$34.18 because \$6.60 appears upon the tax duplicate for delinquent sewer rentals, which latter sum is not included within the former."

The auditor and treasurer prayed for a dismissal of the mandamus petition.

The relator contended that the charges for the delinquent sewer rentals are not taxes or assessments within the meaning of Section 2655, General Code, and that there is no statute granting authority to a municipality to certify such rentals, to the county auditor to be included upon the general tax list and general tax duplicate.

The court in denying the writ said: "Counsel for the county auditor and treasurer maintains that the relief sought is, in effect,

injunction to prevent the collection of delinquent sewer rentals and therefore mandamus will not lie.

"The writ must not be issued in a case where there is a plain and adequate remedy in the ordinary course of the law ' Section 12287, General Code; State ex rel. Methodist Book Concern v. Guckenberger, Auditor, 133 Ohio St. 373, 14 N.E. 2d 9."

TAXATION

(W. W. Hoffman, et al., 40 B.T.A. -- No. 69, Docket 92414, 16741, 96742, Aug. 15, 1939. 7 U.S. Law Week 162.)

Purchasers of real estate subject to mortgage held entitled to deduction for worthlessness of property in year of abandonment prior to loss of title.

Where the interest of the petitioners in improved real estate owned by them subject to a mortgage became worthless in 1934, they are entitled to deduct their loss in that year under Section 23(e)(2), Revenue Act of 1934, although title remained in them until foreclosure was completed in the following year, despite their efforts to abandon their interest in the property during 1934.

The decision in A. J. Schwarzler Co., 3 B.T.A. 535, does not support a broad rule that no loss can possibly be sustained as a result of ownership of real estate as long as title is retained. The interest of the petitioners in the property actually became worthless within the taxable year in which abandonment occurred.

ZONING

(Zaring v. Adams, et al., ___ Ga. ___, 3 S.E. 2d 635)

The passage of a proposed zoning regulation to restrict land to residential use would not work such a substantial and irreparable injury to plaintiff conducting a business enterprise thereon as to enable him to enjoin the county board of commissioners of roads and revenues from passing regulation on the ground that statute authorizing zoning regulation and the regulation itself was unconstitutional. Plaintiff's remedy would be to appeal to courts to determine legality of regulation as enforced against him.

Plaintiff owned two tracts of land in Fulton County, on which he operated certain business enterprises. The board of commissioners of roads and revenues of said county gave notice of its intention to consider

the matter of zoning this and other property and restricting the same to residential uses, in accordance with a petition filed by George Wilson for this purpose. Plaintiff, believing that his business would soon prosper, and that he would have to build more buildings for business purposes, but which this proposed zoning regulation would prohibit, sought an injunction against the members of said board from passing such regulations. He contended that the act vesting in said board of commissioners the power to establish zoning districts was unconstitutional, and further that said regulations themselves would be unconstitutional.

The court in sustaining the judgment of the lower court and dismissing the petition said: "The writ of injunction, commonly referred to as the 'strong arm of equity', as a general rule may be sought only where there is a manifest necessity therefor to prevent irreparable injury to some right of the plaintiff, by reason of impending acts or conduct of another. Accordingly, it may not be resorted to where it does not appear that the acts and conduct sought to be enjoined will, if committed, work substantial and irreparable injury to the plaintiff. In the present case the plaintiff seeks to enjoin the consideration of and passage by the board of commissioners of a proposed zoning regulation which will be applicable to certain property owned by him. The passage by the board of such a proposed regulation will not of itself work such an injury to the plaintiff. It will be in sufficient time to appeal to the courts to determine the legality of this regulation when there is in some manner an attempt to enforce it so as to prevent the plaintiff from using his property in a way contrary to its terms, if the occasion should ever arise when the plaintiff may actually desire to do so. See *Walton v. Reid*, 148 Ga. 176, 96 S.E. 214; *Brimer v. Jones*, 185 Ga. 747, 196 S.E. 435; *Standard Cigar Co. v. Doyal*, 175 Ga. 857, 166 S.E. 434; 14 R.C.L. 437, 8. Cf. *Smith v. Atlanta*, 161 Ga. 769, 132 S.E. 66, 54 A.L.R. 1001; *Commissioners of Glynn County v. Cate*, 183 Ga. 111, 187 S.E. 636."

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

NATIONAL HOUSING ACT - FHA

(Administrative Rules and Regulations under Section 207, National Housing Act, June 30, 1939. 7 U. S. Law Week 116)

Rules and regulations pertaining to multi-family and group housing insurance.

Administrative rules under Section 207 of the act, designated Part 532, and regulations under Section 207, designated Part 533, are issued by the Administrator in revised form, effective as to all mortgages with respect to which a commitment to insure shall be issued on or after June 30, 1939.

The administrative rules deal with applications and commitment, eligible mortgages, eligible mortgagors, supervision of mortgagors, eligible mortgagees, eligible properties and title.

The regulations deal with premiums, rights and duties of a mortgagee under the contract of insurance, and assignments.

NATIONAL HOUSING ACT - FHA

(Comp. Gen. Dec. A-88143, July 24, 1939. 7 U. S. Law Week 115.)

Payment will not be made on defaulted loan insured by FHA where bank had constructive knowledge that borrower was poor credit risk because he defaulted on previous loan at another branch of bank.

Payment may not be made to the loaning bank in connection with a defaulted loan insured by the FHA under the provisions of Title I of the act where the borrower had defaulted on a previous loan through an entirely separate branch of the same financial institution.

In decision A-88143 (Aug. 21, 1937) it was held that where the borrower had previously received another loan from the loaning bank, on which default had occurred the second loan did not constitute a good credit risk, and that the bank in again extending a loan to that borrower had not exercised the good credit judgment required by Regulation No. 10.

That decision is equally applicable to financial institutions

operating a large number of branches, each maintaining independent credit and loan operations, and granted but one contract of insurance by the FHA covering all branches. The information available to one branch must be considered as constructively available to all branches as well as to the home office.

RURAL REHABILITATION CONTRACTS

(Comp. Gen. Dec. B-214, July 13, 1939. 7 U. S. Law Week 114.)

Purchase price of land may not be reduced after execution of contract where it is subsequently discovered that land is less productive than was anticipated.

Purchase price of land sold by the FarmSA to a rural rehabilitation client may not be reduced after the execution of the lease and purchase contract, upon discovery that the land is not as productive as was anticipated.

After the client had entered into possession and operation of the land, it was discovered that the average annual rainfall is greater than was originally believed, and that the drainage facilities are therefore inadequate, so that cultivation is possible on only a small portion of the property. The Administration states that had that fact been known when the contract was entered into, the sales price would have been fixed at \$4,000 rather than \$6,700 as the fair market value of the property.

It appears that figures relative to rainfall for previous years were as readily accessible at the time of the appraisal of the property as at a later time, and that they were equally accessible to the client as to those who made appraisal of the property. There is no evidence and no allegation that there was any fraud, misrepresentation or concealment of material facts on the part of representatives of the Government, upon which the client relied, or any such gross error of judgment as to impute an intent to defraud. There is nothing to indicate that the parties did not deal at arm's length in the whole transaction.

It is well established that the mere fact that the pecuniary result which a contract has produced has not come up to the expectations of one or both of the parties is not sufficient to vary the terms of the written contract. It is equally well settled that officers of the Government are not authorized to modify the terms of a contract by a supplemental or substitute agreement if such modification is prejudicial to the interests of the United States, and that no official of the Government is authorized to give away the money, property, or any claim of the Government.

What the FarmSA proposes is to reduce the amounts of the several debts to the United States of this client and others similarly situated, "thus modifying the contracts to the prejudice of the United States for the reason that the pecuniary result of their undertakings has not come up to their expectations and thus, in effect, giving away or remitting claims or debts due the government, which would be in contravention of well established principles of law". There is no legal authority for such action.

Other rules, regulations and administrative orders affecting housing construction or finance agencies are as follows:

GOVERNMENT EMPLOYEES: U.S. Civil Service Commission published a notice of the condition of the apportionment at the close of business on July 31. See 4 Fed. Reg. 3531.

Published a notice of the condition of the apportionment as of the close of business August 15, 1939. See 4 Fed. Reg. 3625.

FARM CREDIT ADMINISTRATION: The Governor, by regulation filed August 11, amended the Code of Federal Regulations with regard to the authority and order of precedence of the deputy governors, general counsel, etc. See 4 Fed. Reg. 3591.

FLB of Columbia: The FLB of Columbia, South Carolina, by regulation filed August 7, amended the Code of Federal Regulations with regard to appraisal fees to be charged. See 4 Fed. Reg. 3533.

FLB of Wichita: The FLB of Wichita, by regulation filed August 28, amended the Code of Federal Regulations with regard to prepayment fees to be charged. See 4 Fed. Reg. 3743.

FARM SECURITY ADMINISTRATION: The Secretary of Agriculture, by notice filed July 29, fixed the allotments to the several states and territories of the moneys appropriated for the purposes of Title I of the Bankhead-Jones Farm Tenant Act. See 4 Fed. Reg. 3498-9.

The Secretary of Agriculture published notices (filed August 4) designating the counties in Arizona and Nevada in which loans could be made under Title I of the Bankhead-Jones Farm Tenant Act. See 4 Fed. Reg. 3533-4.

FEDERAL HOME LOAN BANK BOARD, by resolution filed September 6, amended the Rules and Regulations for the FHLB System with regard to investments by FHLBs. See 4 Fed. Reg. 3840.

Federal Savings and Loan System: The FHLBB by resolution filed August 1, amended the rules and regulations of FSLs with regard to in-

vestment by such an association in mortgage participations. See Fed. Reg. 3515.

The FHLBB, by resolutions filed August 31, amended the Rules and Regulations for the FSLs with regard to fidelity bonds covering directors, officers, employees, and agents of the Federal associations, and with regard to purchase of loans by Federal associations. See 4 Fed. Reg. 3787.

The FSLIC by resolutions filed August 31, amended the Rules and Regulations for Insurance of Accounts with regard to the making of loans, and the maintenance of fidelity bonds, by the insured institutions. See 4 Fed. Reg. 3788.

Home Owners' Loan Corporation: The General Manager and General Counsel, by Administrative Orders filed August 10, amended the Code of Federal Regulations with regard to: (1) the opening of special deposit accounts; (2) leases of corporation-owned properties; (3) remittances from contract management Brokers income derived from properties referred to them by the Corporation; and (4) restorations by State Managers of insured losses. See 4 Fed. Reg. 3579-81.

The General Manager and General Counsel, by Administrative Orders filed August 10, amended the Code of Federal Regulations with regard to (1) a procedure for the handling of special deposits accounts of home owners; (2) the authority of a Regional Manager to make advances for repairs; (3) allowing the borrower to provide the labor necessary to a contract for reconditioning or necessary repairs; and (4) auditing procedure for special deposits accounts. See 4 Fed. Reg. 3649-50.

The General Manager and General Counsel, by Administrative Order filed August 31, amended the Code of Federal Regulations with regard to the exercise of authority by Regional Managers. See 4 Fed. Reg. 3789.

The General Manager and General Counsel, by Administrative Orders filed September 6, amended the Code of Federal Regulations with regard to definition of maintenance repairs, the authority of Regional Managers to cancel rental agreements, and the capacities of Contract Management Brokers. See 4 Fed. Reg. 3840.

FEDERAL HOUSING ADMINISTRATION: The Administrator, by regulations filed July 29, provided administrative rules for multi-family and group housing under sections 207 and 210 of the National Housing Act. See 4 Fed. Reg. 3489-96.

The Administrator issued Regulations, filed August 31, governing insurance against loss from loans under Title I, Section 2, National Housing Act, as amended. See 4 Fed. Reg. 3789.

UNITED STATES HOUSING AUTHORITY: The Administrator, by regulation filed August 8, set out the purposes for which, and the procedure by which, advance loans might be obtained. See 4 Fed. Reg. 3559.

LEGISLATION

ATTENTION is called to the Annual Summary of State and Federal laws and regulations relating to public and private housing; planning, building and zoning. This summary forms a supplement to the September issue of the Legal Digest and is being distributed to all names on the mailing list.

Additional copies of the supplement are obtainable on written request.

LEGAL COMMENT

LOCAL TAXATION AND HOUSING. Report of Citizens Housing Council
of New York. July 1939.

This report is a discussion of tax policies in housing projects under the following section headings: Forms of Subsidy, Methods of Financing Subsidy, Fiscal Policies as a Method of Promoting or Retarding Property Improvement for Residential Purposes. The appendices contain information and collected opinions on tax exemption statutes. The report is important because of its thorough coverage of the subject matter. It is of value since it presents material on many sides of the problem of local taxation. The facts presented should materially assist in the formulation of policies with respect to taxation and local finance.

STREAMLINED SPECIFICATIONS. by Horace W. Peaslee, F.A.I.A.
Pencil Points, August 1939.

"This is a brief for a modernized, streamlined specification--a departure which simplifies the existing type of specification and decreases the labor expended in its preparation . . .

"The object of any specification is to specify what is to be done, how it is to be done, and the materials and workmanship required. To ensure that the requirements are fulfilled exactly as stated, the old line specification has become so hedged about with legal phraseology as to be primarily a legal document and only secondarily a construction specification. It is, of course, essential to make a specification a sound basis of contract, but it is not necessary to go to the present extremes.

"Quality of materials and workmanship and standards for wages and hours are the 'priceless ingredients' of the specification product. They are not safeguarded by inclusion in each sentence of every paragraph. Plumbing fixtures do not have to be specified sentence by sentence--instead they are sensibly and clearly covered by a simple listing!

"If quality of materials and workmanship and standards of labor do not require incessant repetition and are assured by the General Conditions, then why must every sentence of a specification be made a binding

stipulation that the contractor 'shall provide' certain material and 'shall perform' certain operations?

"The first consideration is to split the specification into two separate specialized writing operations:

"Part 1 for Lawyers--to distil the essence of the contract and to draft a single iron-clad condition to the effect that EVERYTHING listed thereafter, material or operation, shall be put into the job, subject to qualification, condition or exception noted.

"The streamlined version shifts the emphasis back where it originally belonged--on the work to be done--but without lessening the legal safeguards. The legal aspect is summarized in a preliminary governing clause which leaves the body of the specification free from hampering legal phraseology. By focussing attention upon such a single mandatory clause, the possibilities of the usual and almost inevitable omissions and contradictions are minimized. Such a change is the following, which has been drafted either for addition to the General Conditions or as a preliminary clause of each sub-contract division.

"The listing herein of article or material, operation or method, requires that the Contractor shall provide each item listed--of quality, or subject to qualification, noted; and the Contractor shall perform each operation prescribed--according to conditions stated, providing therefor all necessary labor, equipment and incidentals.'

"Part 2 for Technicians--to distil the construction essentials--boiling down to a clear, concise analysis of materials and methods--an Outline of Requirements.

"With the body of the specification left free for technical details only, the specification writer may then express his requirements in clear, concise form in headings and subheadings, without sentence structure, using phrases in preference to clauses, with only essential adjectives or adverbs, with no articles, definite or indefinite, unless positively required."

The author then graphically presents in two-column form the present style of specification writing and the proposed style using as an illustration the "application of membrane waterproofing". The present system uses the cumbersome and repetitious legalistic phraseology while the new one presents the same material in outline form making the contract more easily understood, using less verbiage and space. The saving on the space in words and lines on the illustration averages about 50% not to mention the time. As far as the legal effect is concerned, the contract would have the same meaning and force.

SELECTED REFERENCES*

(The following list of current references, while by no means exhaustive, indicates the availability of material concerning legal problems regarding housing and related documents.)

BUILDING CODES

Building Code Possible for Small Cities. Enabling acts, sponsored by the Middle Atlantic Lumbermen's Association, have been passed by the Pennsylvania General Assembly, empowering incorporated communities to adopt as their own any standard building code published and printed in book form. (Building Supply News, May 1939, p. 30.)

Preparation and Revision of Building Codes. by G. N. Thompson. (BMS 19) This book is a reference work for the preparation of building codes and ordinances.

FORECLOSURES

Non-farm real estate foreclosures. Apr. 1939. (1939) (8) leaves, 1 pl. 4° (Division of Research & Statistics, Federal Home Loan Bank Board). Monthly. Processed. Y3.F31/3:10/939-4.

-Same, May 1939. Y3.F31/3:10/939-5.

HOUSING-General

Fifth annual report of the Federal Housing Administration for the year ending Dec. 31, 1938. 1939. 176 p. 1l. pl. (Federal Housing Administration). Y3.F31/11:1/938. 25¢.

Index-Digest, v. 2, no. 13 and 14, May 1 and 15, 1939; issued fortnightly by Joint Bibliography Section, Sub-Committee on Economics and Statistics of Central Housing Committee. (1939). cover title, iii/83 p. and ii/26p. 4° processed. Y3.C33/3:7/2-12,2-14.

Shelter, the housing program of United States Government. Office of Government Reports. (April 1939) (11) leaves, oblong 8° (Processed) Y3.N21/9:2 Sh 4.

INSURANCE

Mutual mortgage insurance. Federal Housing Administration. Revised July 1, 1939. 1939. 20 pp.

LAWS

List of latest law compilations with subsequent session laws to date; prepared by Minnie Wiener. Federal Emergency Administration of Public Works. June 1939. 20 leaves, f^o (Processed). Y3.F31/4:5L44/939.

LEGISLATION

Home Loan Bank Act. Hearings, 76th Cong., 1st sess. on H.R. 5535 superseded by H.R. 6971, to amend the Federal Home Loan Bank Act, Home Owners' Loan Act of 1936, title 5 of the National Housing Act, and for other purposes, Apr. 25, 26, 27, May 2, 3, 4, 5, 9, 10, 16, 17, 18, 19, 23, 25, 26 and June 1, 2, 6, 1939. 446 p. (Banking and Currency Committee, House.) Y4.B22/1:H75/3.

LOANS

Property improvement loans under Title I of National Housing Act, as amended, June 3, 1939, regulations effective July 1, 1939. (1939) Federal Housing Administration. iv/44 p. (FHA 1, revised 7-1-39). Y3.F31/11:7L78/3/939

MISCELLANEOUS

Decisions of Comptroller General, v. 18, Apr. 1939; Fred H. Brown, comptroller general, R. N. Elliott, assistant comptroller general. 1939. General Accounting Office. (1)/763-815 p. (Monthly.) Paper, 10¢. single copy, \$1.00 per year; foreign subscription, \$1.40 GA 1.5/2:18/10.

Federal Home Loan Bank Board and its agencies: Federal Home Loan Bank System, Federal Savings and Loan Insurance Corporation, Home Owners' Loan Corporation (general information). (1939) 18 p. 4^o (Processed) Y3.F31/3:2F31.

Publications of Information Service (list). Office of Government Reports, Jan. 1, 1939. 1 p. 4^o (Processed) Y3.N21/9:2 In3/4.

Principal Federal Agencies Concerned with Housing. Office of Government Reports. broadside. Aug. 25, 1939. 19x14". (Issued by the OGR, from data assembled by the Central Housing Committee, to clarify differences in authorization and functioning of Federal agencies concerned with housing.)

MORTGAGES-Cuba

Curso de legislacion hipotecaria. Havana: Editorial Verdugo, 1938. 4 p. 1, 336, 10, 11. Manuel Dorta Duque. A review of mortgage legislation

in Europe from the late middle ages to the present, the derivation of the Cuban mortgage law, and an analysis of the theory and characteristics of mortgages and mortgage practice.

-General

Never a letter like this! (that your mortgage comes due, if you secured your loan from Federal land bank.) Farm Credit Administration. (1939). (4) p. oblong, 48° (1-29). FCA1.4/2:1-29.

MORTGAGE INSURANCE

Mutual mortgage insurance, administrative rules and regulations under sec. 203 of National Housing Act, as amended June 3, 1939. Revised July 1, 1939. 1939. Federal Housing Administration. (1)/20 p. (FHA form 2010). Y3.F31/11:7M84/2/939.

Property Standards (requirements for mortgage insurance under Title 2 of National Housing Act); (FHA) pt. 6, Minimum requirements for eastern Missouri district, St. Louis, Missouri; Revised June 1, 1939. 1939. (2)/8 p. (Circular 2; FHA form 2268). Y3.F31/11:4/2/rev.-6,pt.6/Mo.-2.

-Same; pt. 6, Minimum requirements for Georgia, Atlanta, Ga. Revised June 1, 1939. 1939. (2)/8 p. (Circular 2; FHA form 2270). Y3.F31/11/4/2/rev.-5,pt. 6/Ga.

-Same; pt. 6, Minimum requirements for Louisiana, New Orleans, La. Revised June 1, 1939. 1939. (2)/8 p. (Circular 2; FHA form 2238). Y3.F31/11:4/2/rev.-7, pt. 6/La.

-Same; pt. 6, Minimum requirements for North Dakota. Bismarck, N. Dak. Revised June 1, 1939. 1939. ii/8 p. (Circular 2; FHA form 2261). Y3.F31/11:4/2/rev.-5; pt. 6/N.Dak.

-Same; pt. 6, Minimum requirements for Oklahoma, Oklahoma City, Oklahoma. Revised June 1, 1939. 1939. (2)/8 p. (Circular 2; FHA form 2221). Y3.F31/11/4/2/rev.-6; pt. 6/Okla.

POLICE POWER

-Maine

Police Power in Maine. Amended Section 136 of Chapter 5, Maine, Revised Statutes, regarding authority of cities and towns to adopt and enforce building codes. (Building Standards Monthly, June, 1939, p. 3).

TAXATION:

-Homestead Exemption

Homestead Tax Exemption. Analysis by 30 realtors in 12 states which now practice exemption. Does it increase taxes on other kinds of real estate? 17 say it doesn't; 13 say it does. Details of a study made

for Duluth by the local government Research Bureau covering the years 1935-39. How tax exemption works in Canada. (Freehold. July 1, 1939, pp. 13-16.)

ZONING

Zoning Group Housing Projects. Paul Oppermann. American City. Aug. 1939. This article discusses the problems of amending a zoning ordinance to meet the requirements of large-scale housing projects. The experiences and solutions of a number of cities throughout the country are presented.

* Unless otherwise indicated, all publications listed are available upon application to Superintendent of Documents, Government Printing Office, Washington, D. C.

· HOUSING · LEGAL DIGEST

SEPTEMBER

1939

SUPPLEMENT

ANNUAL SUMMARY
of
STATE AND FEDERAL LAWS
relating to
Public ...HOUSING... Private

ISSUED BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

HOUSING LEGAL DIGEST

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ANNUAL SUMMARY
of
STATE AND FEDERAL LAWS
relating to
PUBLIC AND PRIVATE HOUSING

Prepared by the Central Housing Committee Sub-Committee
on Law and Legislation

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With the assistance of George N. Thompson, Bureau of Standards,
and Harold A. Merrill, National Resources Planning Board.

FOREWORD

This material has been prepared for the purpose of summarizing the current status of housing legislation in the United States. As changes are constantly occurring in laws affecting public and private housing, it is proposed to issue a revision annually. The material is necessarily generalized in the interest of brevity.

Explanatory Statement

With regard to Public Low-Rent Housing and Slum Clearance:

The United States Housing Act of 1937, as amended in 1938, authorizes the United States Housing Authority to provide financial assistance for the construction and administration of public low-rent housing and slum clearance projects by municipal, county and state public housing agencies for families of low income. Thirty-eight states have enacted enabling legislation to authorize such public agencies to undertake low-rent housing and slum clearance projects. Such state legislation usually (1) authorizes public housing agencies to issue bonds and to acquire property by eminent domain, (2) provides that the property and bonds of such public housing agencies are exempt from taxation, (3) authorizes public bodies and private persons to invest in the bonds of such public housing agencies and (4) authorizes state public bodies to cooperate with public housing agencies or the Federal Government with regard to housing and slum clearance projects. Slum clearance legislation is also often enacted to authorize municipalities to exercise the police power for the repair, closing or demolition of dwellings unfit for human habitation.

With regard to Limited Dividend Housing:

Fifteen states have enacted legislation to authorize limited dividend housing corporations to provide safe and sanitary housing for families of low income and for the elimination of congested and insanitary housing conditions under the supervision, regulation and control of a state housing board or commission. The profits of such corporations are limited by statute. Such corporations are usually authorized to acquire property by eminent domain with the approval of the state board or commission. State boards generally have the following powers with regard to limited dividend housing corporations: to conduct hearings and to study housing conditions to determine the need for housing projects; to approve housing projects prior to their initiation; to

approve the area in which projects will be located; to approve the financing of projects; to fix the rents charged; to investigate the business affairs of the corporations; to make rules and regulations with respect to the operation of projects; and in general to supervise all the activities of limited dividend corporations undertaking housing projects.

With regard to Laws Favorable and Unfavorable to Home Financing:

Consideration of laws affecting home financing, either favorably or adversely, has been limited to those which either do or do not tend to make mortgage loans available to a home owner expeditiously and economically. Whether a particular law is to be considered favorable or unfavorable to home financing is governed by standards which must, of necessity, be somewhat arbitrary. Laws designed to benefit borrowers may in fact be a detriment to home financing if they have the effect of discouraging lenders from making loans in the jurisdiction in which they operate. Of this class are moratorium laws in general, laws limiting the right of the lender to obtain through a receiver or otherwise, possession of mortgaged property and the income therefrom during foreclosure, laws limiting deficiency judgments and laws permitting long redemption periods. Although foreclosure by court action is expeditious and economical in a number of states, it is on the whole subject to considerable delay with consequent accrual of fees and costs which increase the expense to the borrower in case of redemption or repurchase.

With the above in mind, the factors indicated herein were considered in deciding whether particular state laws should be considered favorable or unfavorable.

Foreclosure by advertisement has been uniformly listed in the favorable column and foreclosure by court action, where required, has been noted as unfavorable.

From three to four months from first foreclosure notice to date of sale has been deemed a reasonable foreclosure period and when a greater length of time is required, it has been noted as unfavorable.

A redemption period which, added to the foreclosure period, amounts to more than six months, has been listed as unfavorable. This is particularly true when the borrower is entitled to possession and the income from the property during such period.

Foreclosure costs which on a small home loan average more than \$150, including usual attorneys' fees, have been considered unfavorable.

Laws which permit banks, trust companies, building and loan associations, insurance companies or fiduciaries to make or invest in mortgage loans insured by Federal Housing Administrator, and those under which all taxes are payable to one official have been noted in the favorable section.

The imposition of no tax or a comparatively small tax on savings and loan associations or shareholders thereof has been noted as a favorable factor. Such a tax usually is passed on to the borrowers from such association and is a tax in addition to the ordinary real estate taxes paid by such borrower thus placing an additional burden, not borne by the general public, upon the home owner who finances his home through a savings and loan association.

With regard to Building Regulations:

Building codes are concerned with the safety, health and welfare of those in and about buildings. They contain provisions for construction and maintenance intended to minimize danger from fire, from collapse, and from insanitary conditions. They are based on the police power, and except in those places where the Federal Government has direct jurisdiction, represent an exercise of state authority. This authority is generally passed on to the municipalities through enabling acts, powers granted in cities' charters or otherwise. As a result the more than 1,500 building codes in effect are mostly in the form of municipal ordinances. There are a limited number of state codes which are themselves further limited to specific classes of occupancy or specific areas within the state. State building codes are usually in the form of rules and regulations promulgated by boards acting under authority granted by law. Regulation of building construction and equipment is also exercised through housing codes, plumbing codes, elevator codes, electrical codes, and other forms of state and municipal legislation.

With regard to Planning, Platting and Zoning:

The city planning and housing movement has for its objective the more orderly and efficient development of our urban areas for the provision of improved and more economical working and living and living conditions. The comprehensive city plan which best serves the present and probable future needs of the citizens of a community for their homes, their places of work, their recreation and travel about the community, provides for the appropriate location and development of streets, parks, public utilities and public, private and residential buildings, thus insuring the greatest possible stability of use values in residential as well as other areas.. Through enabling legislation most of the states have authorized cities and counties to create an official planning commission and to proceed with the development of city and county planning procedures. Through appropriate land subdivision regulations many cities, townships and counties may exercise control of land development. The continuing studies by city planning commissions constitute a comprehensive and sound basis of fact for determining housing, recreation, transportation and other needs and properly guiding future development.

Zoning is one of our most important instruments for insuring the orderly development of cities and the preservation of human and economic values. Through zoning, a city regulates the use of buildings, structures, and land by segregating them to their appropriate locations and places limitations upon the height of buildings and the space about them, by the establishment of specific zones or districts. Zoning is an exercise of the police power of the state for the protection of health, safety and general welfare of the public. Immediately following adoption of the original comprehensive zoning ordinance in New York City in 1916, the reasoning of the United States Supreme Court in *Welch vs. Swasey* (214 U.S. 91) and *Hadacheck vs. Sebastian* (239 U.S. 394) established the validity of zoning and assured its success. The constitutionality of zoning was firmly established by the decisions of the Supreme Court in the cases of *Euclid Village vs Ambler Realty Co.* (272 U.S. 365) in 1926 and *Gorrie vs Fox* (274 U.S. 603) in 1927.

The material on planning, platting and zoning legislation presented herein has been made available by the National Resources Planning Board from its Circular XII (revised Sept. 10, 1939) which also contains citations on State Planning and Recreation.

The following publications, to which reference is made in this summary were prepared by the former Advisory Committee on City Planning and Zoning of the U. S. Department of Commerce:

A Standard City Planning Enabling Act, 1928, 54 p. Government Printing Office, Washington, D. C. 15 cents.

A Standard State Zoning Enabling Act, 1926, 13 p. Government Printing Office, Washington, D. C. 5 cents.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, General Acts of 1935, No. 56, as amended by General Acts of 1935, No. 445 (1936 Supplement to Code of 1928, Sections 1297 (5) to 1297 (31)), and as further amended by General Acts of 1939, No. 148, provides for the creation of housing authorities for cities and towns. The area of operation of an authority consists of the city or town and the area within ten miles. An authority has the power to issue bonds and to acquire property by eminent domain. Housing Cooperation Law, General Acts of 1935, No. 41 (1936 Supplement to Code of 1928, Sections 1297 (1) to 1297 (4)), authorizes the State and any county, city, town, municipality or agency of the State to cooperate with an authority or the Federal Government with regard to housing projects. Legal Investments Law, General Acts of 1939, No. 570, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds.

In an Advisory Opinion to the Governor, (179 So. 535 (1938)), the Supreme Court of Alabama declared that the property of a housing authority is not subject to taxation by the Legislature.

Housing authorities have been created for Andalusia, Anniston, Birmingham, Colbert County, Florence, Gadsden, Mobile, Montgomery, Phenix City, Red Level and Selma.

Home Financing

Laws Favorable

Foreclosure by advertisement.
Short period required to foreclose (approximately 40 days).
No moratorium law.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Long redemption period--2 years--although purchaser obtains title and possession at date of foreclosure sale.
Law limiting deficiency judgments.
Relatively high taxes on savings and loan associations or shareholders.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is no state building code. The state does, however have miscellaneous laws relating to fire escapes, plumbing, and sanitary facilities, the licensing of contractors and registration of engineers and surveyors, and empowering municipalities to establish building regulations. Thirty-three municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1935, Act 534, City Planning Enabling Act.

Platting and Subdivision Control: Laws of 1927, Nos. 208 and 217; Code Sec. 10357-10359; 6439-6441, regulates the recording of plats.
Laws of 1935, Act No. 534, City Planning Enabling Act.

Zoning: Laws of 1927, Act 373, confers zoning authority upon municipal corporations of population between 60,000 and 150,000.

Laws of 1923, Act 435, as amended by Laws of 1931, Act 389, enables cities of 100,000 or more to zone. (Follows Standard Act.)

Laws of 1923, Act 443, enables each municipal corporation to zone.

Laws of 1927, Act 380, provides for zoning in Capitol Heights Section of City of Montgomery.

Public Low-Rent Housing and Slum Clearance

Municipal Housing Law, Acts of 1939, Chapter 82, provides for the creation of housing authorities for cities and towns as agents of such cities and towns. The area of operation of an authority consists of the city or town for which it is created. A city or town has the power to issue housing bonds and to acquire property by eminent domain for housing projects. Any state public body is authorized to cooperate with a city or town or an authority or the Federal Government with regard to housing projects. Housing projects, being the property of a city or town, are exempt from taxation pursuant to Article IX, Section 2 of the State Constitution.

An authority has been created for Phoenix.

Home Financing

Laws Favorable

State, county and local taxes, except special assessments, collected by one collector.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only--an extended period is required (about one year), and it is relatively expensive.

Redemption period (6 months). During the redemption period, if property is occupied by home owner, purchaser is not entitled to rents.

Moratorium laws and laws limiting deficiency judgments.

High taxes on savings and loan associations.

Increased cost to lender of maintaining tax records due to fact that special assessments are collected by separate officials.

Building Regulations

There is no state building code. There are laws providing for the registration of architects, engineers, and surveyors, and for the licensing of contractors. Municipalities are authorized to draw up regulations concerning prevention of fire, construction of chimneys, construction of fire escapes, and other matters customarily found in local building regulations. Fourteen municipalities of 2500 population and over are reported to have local building codes.

ARIZONA (cont'd)

Planning, Platting and Zoning

Local Planning: No Law.

Platting and Subdivision Control: Laws of 1928, Rev. Code and Sup. of 1935, Sec. 423-428; 393-395; 3210-3211; 3193-3194; regulates platting by authorizing the governing bodies of municipalities to approve all plats.

Laws of 1937, Ch. 53, controls and regulates subdivision by licensing real estate salesmen and brokers.

Zoning: Laws of 1925, Ch. 8, as amended by Laws of 1926, Ch. 27 (Code of 1928, Ch. 12, Art. 14, Sec. 62, p. 93), enables incorporated cities and towns to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Acts of 1937, No. 298 (Pope's Digest of Statutes of Arkansas, 1937, Sections 10059 to 10088), provides for the organization of housing authorities for cities and counties. The area of operation of a city authority consists of the city and the area within five miles (if the city has a population of less than 10,000) or ten miles (if the city has a population of 10,000 or more); and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property of housing authorities is exempt from taxation. The bonds of housing authorities of the State are legal investments for public and private funds. Any state public body is authorized to cooperate with an authority or the Federal Government with regard to housing projects. Eminent Domain Law, Acts of 1935, Act No. 177 (Pope's Digest of Statutes of Arkansas, 1937, Sections 5083 to 5086), authorizes any Federal agency or any corporation receiving aid from the United States or any agency thereof to acquire real property by eminent domain for a housing project.

A housing authority has been organized for Fayetteville.

Limited Dividend Housing

State Housing Law, Acts of 1933, No. 89 (Pope's Digest of Statutes of Arkansas, 1937, Sections 12243 to 12269), authorizes limited dividend housing companies to provide safe and sanitary dwellings for families of low income under the supervision and control of the State Board of Housing. Such companies have the power to acquire property by eminent domain only with the authorization of the Board.

Home FinancingLaws Favorable

Short period of foreclosure
(about 100 days).
Redemption period may be waived.
State, county and local taxes,
except special assessments,
collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Laws Unfavorable

Practical necessity of foreclosure
by court action.
One year redemption period
Moratorium laws.
High taxes on building and loan
associations.
Increased cost to lender of maintaining
tax records due to fact
that special assessments are collected
by separate officials.

ARKANSAS (Cont'd)

Building Regulations

There is no state building code. There are laws relating to excavations, the registration of engineers, sanitation, registration of plumbers, and regulation of plumbing, and also authorizing municipalities to draw up local building regulations, including limitations on the height of buildings. Fourteen municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1937, Act 246 (Digest of Stats. of Ark., Ch. 39, Sec. 2445), authorizes creation of planning boards in all counties.

(Follows phraseology and certain provisions of Standard Act.)

Laws of 1931, Act No. 1 (Digest of Ark. Stats., 1937, Ch. 115, Sec. 9522, p. 2414) authorizes taking of land and easements by eminent domain for construction of public buildings and creation of parks and improvement districts.

Laws of 1931, Act 210 (Digest of Ark. Stats., 1937, Ch. 115, Sec. 10032), authorizes cities of first class and adjacent property owners to close and abandon unnecessary alleys.

Laws of 1931, Act 275 (Digest of Ark. Stats., 1937, Ch. 115, Sec. 10027), enlarges powers of city and town councils regarding special improvement districts; authorizes council to deny petition for organization of an improvement district where city planning commission disapproves it as not harmonizing with city plan.

Laws of 1929, No. 108, authorizes cities of first and second classes to plan and zone. (Substantially follows the Standard Act.)

Platting: 1937 Digest of Stats., Sec. 9524, regulates recording of plats.

Zoning: Laws of 1924, Act 6, p. 60, enables cities of first class to zone.

Laws of 1929, Act 108, p. 545 enables first and second class cities to plan and zone.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Statutes of 1938, Extra Session, Chapter 4, as amended by Statutes of 1939, Chapter 301, provides for the organization of housing authorities for cities, cities and counties, and counties. The area of operation of a city or city and county authority consists of the city or city and county and the area within five miles; and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. Housing Cooperation Law, Statutes of 1938, Extra Session, Chapter 2, authorizes any state public body to cooperate with a housing authority or the Federal Government with regard to housing projects. Eminent Domain Law, Statutes of 1938, Extra Session, Chapter 3, authorizes any city, city and county, county, housing authority or commission or other subdivisions or political body of the State to acquire real property by eminent domain for a housing project. Tax Exemption Law, Statutes of 1938, Extra Session, Chapter 1, provides that the property and bonds of a housing authority are exempt from taxation. Legal Investments Law, Statutes of 1939, Chapter 362, Provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Validating Law, Statutes of 1939, Chapter 752, validated the organization of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

Housing authorities have been organized for Los Angeles City, Los Angeles County, Oakland, San Francisco City and County and Santa Monica.

Limited Dividend Housing

Limited Dividend Housing Corporations Act, Statutes of 1933, Chapter 538 (Deering's General Laws of California, Act 3481), authorizes private limited dividend corporations to undertake housing for families of low income or for the reconstruction of slum areas under the supervision and control of the Department of Industrial Relations, acting through the Commission of Immigration and Housing. Such corporations have the power to acquire property by eminent domain only with the authorization of the Commission.

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Foreclosure by advertisement allowed in deeds of trust.
No redemption period from power of sale foreclosure.
Effective supervision of subdivision lot sales to prevent fraud and wildcat development.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure, in the case of mortgages, is by court action only.
Long redemption period (one year from date of judicial sales).
Moratorium laws and laws limiting deficiency judgments.
Increased cost to lender due to fact that taxes are collected by more than one official.

Building Regulations

There is a state regulation under the School Construction Act applying to schools, and a state housing act. There are also miscellaneous laws relating to earthquakes, fire hazards, the licensing of architects, contractors and plumbers; the registration of civil engineers and other matters pertaining to building construction. The state housing act applies to apartments, hotels, and dwellings, and regulates a great variety of features of these structures. There is a law which permits cities and counties to adopt building, plumbing, or electrical codes, which have been published in book form, by reference. One hundred forty municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1929, Chap. 838, p. 1805; Code of General Laws (Derring) Vol. 2, Act 5211b, p. 2662, as amended by Laws of 1937, Ch. 665. (Covers main features of Standard Act with variations.) Authorizes planning commissions in cities, counties and regions consisting of parts of counties or groups of counties.

Laws of 1929, Ch. 795, relates to excess condemnation. Laws of 1927, Ch. 54--Senate Concurrent Resolution No. 28--Charter for Pacific Grove; authorizes city planning board.

Platting and Subdivision Control: Laws of 1938, Special Session, Ch. 19, amends law relative to alteration of municipal boundaries and control of annexed territory.

Laws of 1929, Ch. 837,--Map-filing Act. Relates to recording of maps of subdivisions; conditions, filing of maps with city, county or regional planning commission.

Laws of 1935, Ch. 112, as amended by Laws of 1937, Ch. 670, regulates subdividing by licensing real estate brokers and salesmen.

Zoning: Acts of 1917, Ch. 784, p. 1419, as amended by Laws of 1929, Ch. 398 (Code of General Laws of 1931, Vol. 1, Act 994, p. 524) confers zoning authority upon "any incorporated city or town."

Acts of 1929, Ch. 838 (Code of General Laws of 1931, Vol. 2, Sec. 5211b, p. 2662)--Planning Act enabling "cities, and counties" to adopt a plan. The fourth section provides for zoning by the planning commission created in the Act; the procedure to be followed for zoning is to be in accordance with the Act of 1917, Ch. 784, as amended by Laws of 1929, Ch. 398 and Laws of 1937, Ch. 665.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1935, Chapter 132 (Colorado Statutes, 1935, Volume 3, Chapter 82, Sections 29 to 58), as amended by Session Laws of 1937, Chapter 172 (1938 Pocket Supplement to Colorado Statutes, 1935, Volume 3, Chapter 82, Sections 30 to 55), provides for the creation of housing authorities for second class cities, having a population of 5,000 or more, and first class cities. The area of operation of an authority consists of the city and the area within ten miles. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. City Housing Law, Laws of 1935, Chapter 131 (Colorado Statutes, 1935, Volume 3, Chapter 82, Sections 4 to 28), as amended by Laws of 1937, Chapter 171 (1938 Pocket Supplement to Colorado Statutes, 1935, Volume 3, Chapter 82, Sections 5 to 27), authorizes second class cities, having a population of 5,000 or more, and first class cities to construct housing projects in such cities. Such housing projects and the housing bonds of a city are exempt from taxation. City housing projects must be turned over to housing authorities for management. Housing Cooperation Law, Laws of 1935, Chapter 130 (Colorado Statutes, 1935, Volume 3, Chapter 82, Sections 1 to 3), as amended by Laws of 1937, Chapter 170 (1937 Pocket Supplement to Colorado Statutes, 1935, Volume 3, Chapter 82, Sections 1 to 3), authorizes any second class city, having a population of 5,000 or more, or any first class city or any government to cooperate with an authority or the Federal Government with regard to housing projects. Legal Investments Law, Laws of 1939, H.B. 105, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Validating Law, Laws of 1939, H.B. 108, validated the creation of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

Housing authorities have been created for Denver and Pueblo.

Home Financing

Laws Favorable

Laws Unfavorable

Taxes on savings and loan associations negligible.
Foreclosure by advertisement.
Short foreclosure period (about 5 weeks).
No moratorium law.
All real property taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Redemption period 6 months.

COLORADO (cont'd)

Building Regulations

There is no state building code. There are laws requiring the licensing of architects, engineers and plumbers, and regulating fire escapes, exits and other features of construction. There is a state plumbing code. There is also a law authorizing municipalities to draw up building regulations. Twenty-four municipalities of 2500 population and over are reported to have local building codes.

Planning, Platting and Zoning

Local Planning: Laws of 1929, Ch. 67 (Colo. Stats. Ann. (1935) V.4, Ch. 163, Art. 7, p. 1380), authorizes creation of city and regional planning commissions. (Follows Standard City Planning Act.)

Platting and Subdivision Control: Colo. Stats. Ann. (1935), V. 4, Ch. 163, Art. 6, p. 1377, authorizes cities and towns to control plats and subdivisions.

Zoning: Laws of 1923, Ch. 182, Supp. to 1932 Comp. Laws, Ch. XXI-A Sec. 9343.1, enables cities and incorporated towns to zone. (Follows Standard Act.)

Laws of 1939, S.B. 378--approved March 30--enables all counties to zone.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, 1937 Supplement to General Statutes, Chapter 33c, as amended by Public Acts of 1939, Chapters 24 and 29, provides for the organization of housing authorities for cities, towns and boroughs having a population of more than 10,000. The area of operation of an authority consists of the city, town or borough for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Any state public body is authorized to cooperate with a housing authority or the Federal Government with regard to housing projects. Legal Investments Law, Public Acts of 1939, Chapter 283, authorizes savings banks to invest 5% of their deposits and surplus in certain bonds of housing authorities in the State.

Housing authorities have been created for Bridgeport, Hartford, New Britain, New Haven, Norwalk and Waterbury.

Home FinancingLaws FavorableLaws Unfavorable

Short period of foreclosure
(about 3 months).
Redemption period within
discretion of court and
is usually very short.
No moratorium law.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Foreclosure is by court action
only and it is relatively
expensive.
Relatively high taxes on building
and loan associations or shareholders.
Increased cost to lender of maintaining
tax records due to fact
that taxes are collected by more
than one official.

Building Regulations

There is no state building code. There are laws in regard to exit facilities, the registration of architects and engineers, the construction of schools, provision for fire escapes, and otherwise regulating construction. There is a state Tenement House Act dealing with lot areas, yard size and other matters customarily found in such acts. There are miscellaneous laws relating to sanitation and empowering municipalities to adopt building regulations. Thirty-three municipalities of 2500 population and over are reported to have building codes.

CONNECTICUT (cont'd)

Planning, Platting and Zoning

Local Planning: Special planning enabling acts are enacted for cities and towns. (For citations see NRPB Circular XII.)

Platting and Subdivision Control: Public Acts of 1931, Ch. 26, relates to filing of maps and plans after approval by town plan commission; also authorizes town plan commission to change any map or plan so made and filed.

Zoning: Laws of 1925, Ch. 242, as amended 1931 - 33 Supp. Ch. 29 and 29a, and Laws of 1939, Ch. 51, enables any city, town or borough to zone. (Follows Standard Act.)

Laws of 1923, Ch. 279, enables certain cities to zone.

Other special zoning enabling acts are enacted for certain cities and towns. (For citations see NRPB Circular XII.)

Public Low-Rent Housing and Slum Clearance

Housing Authority Law, Laws of 1934, Chapter 16 (Revised Code of 1935, Sections 5453 to 5472), authorizes the State Board of Housing to create housing authorities in any county or any part of a county. The area of operation of an authority consists of the county or part of the county designated by the State Board of Housing. An authority has the power to issue bonds and to exercise the power of eminent domain. The property and bonds of an authority are not exempt from taxation. Any city, village or town included in the area of operation of an authority may cooperate with such authority in certain limited respects. State Housing Law, Laws of 1933, Chapter 61 (Revised Code of 1935, Sections 5424 to 5452) created a State Board of Housing.

A housing authority has been created for Wilmington.

Limited Dividend Housing

State Housing Law, Laws of 1933, Chapter 61 (Revised Code of Delaware of 1935, Sections 5424 to 5452), authorizes limited dividend housing corporations to undertake projects to provide safe and sanitary dwellings under the supervision and control of the State Board of Housing. Such corporations may acquire property by eminent domain only with the authorization of the Board. Housing projects of such corporations may be exempted from taxation by municipalities; and to the extent that such projects are so exempted, they shall also be exempt from all state and county taxes.

Home Financing

Laws Favorable

No tax on savings and loan associations - except income tax on shareholders.
Short period of foreclosure (about 3 months).
No redemption period.
No moratorium law.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is no state building code. There are miscellaneous regulations concerning fire escapes and building construction. Registration of architects and licensing of engineers and contractors is required. Four municipalities of 2500 population and over are reported to have local building codes.

DELAWARE (Cont'd.)

Planning, Platting and Zoning

Local Planning: Laws of 1931, Ch. 88, p. 342, creates a regional planning commission for New Castle County.

Platting: No law.

Zoning: Laws of 1929, Constitutional Amendment (Art. II, Sec. 25) adopted, authorizing the General Assembly to enact zoning enabling Acts for municipalities other than counties.
Laws of 1934, Ex. Session, Ch. 22, enables cities and incorporated towns to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

District of Columbia Alley Dwelling Act, 48 Stat. 930 (1934), as amended, 52 Stat. 1186 (1938), provides for the organization of the Alley Dwelling Authority. The area of operation of the authority consists of the District of Columbia. The authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of the authority are exempt from taxation.

In 1936 the District Court of the District of Columbia (Docket No. 2379, filed April 3, 1936), sustained the right of the Alley Dwelling Authority to condemn land for the elimination of alley dwellings, and for reclaiming squares containing inhabited alleys.

Limited Dividend Housing

District of Columbia Alley Dwelling Act, 48 Stat. 930 (1934), as amended, 52 Stat. 1186 (1938), authorizes the Alley Dwelling Authority to make loans to limited dividend corporations for housing on property acquired by the authority. Washington Sanitary Housing Company Act, 33 Stat. 301 (1904), created the Washington Sanitary Housing Company as a limited dividend company with authority to build sanitary houses for low rental.

Home Financing

Laws Favorable

Foreclosure by advertisement.
Short period of foreclosure
(approximately 30 to 60 days).
No period of redemption after
sale.
No moratorium law.
All real property taxes col-
lected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Hous-
ing Administrator.

Laws Unfavorable

High taxes on savings and loan
associations.

Building Regulations

There is a building code, plumbing code, and electrical code.
There are also miscellaneous Acts of Congress dealing with
various features of building regulations.

DISTRICT OF COLUMBIA (Cont'd)

Planning, Platting and Zoning

Planning: Laws of 1924, 43 Stat. 463, creates a National Capital Park and Planning Commission for the purpose of developing a comprehensive and coordinated plan for the National Capital and its environs in Maryland and Virginia.

Platting: See Planning Act.

Zoning: Laws of 1920, 41 Stat. 500, enables the Commissioners of the District of Columbia to adopt and enforce zoning regulations. Also see Act of June 20, 1938 - 52 Stat. 797 - Ch. 534.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, General Laws of 1937, Chapter 17981, No. 275 (1938 Pocket Part to Supplement to Compiled General Laws of Florida, 1927, Sections 7100 (3-a) to 7100 (3-y)), as amended by Laws of 1939, Chapter 19510, provides for the organization of housing authorities for cities having a population of more than 5,000. The area of operation of an authority consists of the city and the area within five miles (if the city has a population of less than 25,000) or ten miles (if the city has a population of 25,000 or more). An authority has the power to issue bonds and to acquire property by eminent domain.

Housing Cooperation Law, General Laws of 1937, Chapter 17982, No. 276 (1938 Pocket Part to Supplement to Compiled General Laws of Florida, 1927, Sections 7100 (3-z) to 7100 (3-hh)), authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Tax Exemption Law, General Laws of 1937, Chapter 17983, No. 277 (1938 Pocket Part to Supplement to Compiled

General Laws of Florida, 1927, Sections 7100 (3ii) to 7100 (3-kk)), exempts the property and bonds of an authority from taxation. Legal Investments Law of 1939, Chapter 19512, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Validating Law, Laws of 1939, Chapter 19511, validated the organization of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities. Eminent Domain Law, Laws of 1939, Chapter 19217, authorizes housing authorities to take immediate possession of property involved in a condemnation proceeding. Jacksonville Housing Authority Law, Laws of 1939, Chapter 19913, extends the area of operation of the Jacksonville housing authority to include the whole of Duval County. Jacksonville Beach Housing Authority Law, Laws of 1939, Chapter 19916, created the Jacksonville Beach housing authority.

In *Marvin v. Housing Authority of Jacksonville, Florida, et al.*, 183 So. 145 (Fla., 1938), the Supreme Court of Florida sustained the constitutionality of the Housing Authorities, Housing Cooperation and Tax Exemption Laws.

Housing authorities have been organized for Daytona Beach, Fort Lauderdale, Jacksonville, Key West, Lakeland, Miami, Miami Beach, Orlando, Pensacola, St. Augustine, St. Petersburg, Sarasota, Tampa and West Palm Beach.

Limited Dividend Housing

State Housing Law of 1933, Laws of 1933, Chapter 16028 (Supplement to Compiled General Laws of Florida 1927, Sections 4151 (132) to 4151 (154)), authorizes limited dividend housing companies to provide housing for families of low income under the control, regulation and supervision of the State Housing Board.

FLORIDA (cont'd)

Home Financing

Laws Favorable

Taxes on savings and loan associations negligible.
No moratorium statutes.
Short period of foreclosure (about 4 months).
No redemption period.
Homesteads exempt from taxation up to \$5,000.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is no state building code. There is a state law applying to hotels, rooming houses, and restaurants, and covering such matters as fire escapes and sanitation. There are laws requiring the licensing of architects, engineers and plumbers. Municipalities are empowered to draw up local regulations regarding building construction and plumbing. Counties with populations ranging from 100,000 to 170,000 are empowered to destroy hazardous structures. Counties with populations of not less than 180,000 are authorized to regulate the height, number of stories, and size of buildings not included in any municipality. Forty-nine municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1935, Ch. 17275, as amended by Laws of 1939, S.B. 333, approved May 30, creates the State planning board; prescribes its powers and duties; creates county planning councils, and prescribes their powers and duties. Special planning acts for certain cities. (See NRPB Circular XII.)

Platting and Subdivision Control: Special Acts, 1927, Ch. 13,441(No. 1635), requires the reference of maps and plats of any land within $1\frac{1}{2}$ miles of city limits of city of Tallahassee, when filed for public record, to City Commission of Tallahassee for approval. They must conform to general plan of that city.

Zoning: Laws of 1939, H.B. 439 (law without approval June 12), authorizes all cities and towns (except in Hillsborough County) to zone. (Follows Standard Act.)

For special zoning acts relating to certain cities see NRPB Circular XII.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, Part 1, Title 4, No. 411 (1938 Pocket Part of Code of Georgia, Chapter 99-11), as amended by Laws of 1939, S.B. 34, provides for the organization of housing authorities for cities, having a population of more than 5,000, and counties. The area of operation of a city authority consists of the city and the area within ten miles; and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Housing Cooperation Law, Laws of 1937, Part 1, Title 6, No. 499 (1938 Pocket Part of Code of Georgia, Chapter 99-12), as amended by Laws of 1939, S.B. 33, authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Legal Investments Law, Laws of 1939, S.B. 32, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Validating Law, Laws of 1939, S.B. 35, validated the organization of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

In *Williamson v. Housing Authority, etc., Augusta et al.*, 186 Ga. 673 199 S.E. 43 (1938), the Supreme Court of Georgia sustained the constitutionality of the Housing Authority and Housing Cooperation Laws.

Housing authorities have been organized for Athens, Atlanta, Augusta, Brunswick, Columbus, Decatur, Macon, Marietta, Milledgeville, Rome, Savannah and Thomasville.

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Foreclosure by advertisement.
Short period of foreclosure (about 40 days under power of sale - 3 months in court).
No redemption period ordinarily exist.
No mortgage moratorium law.
Provision for notice to mortgagees and other lienors of tax delinquencies prior to sale.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Provision in statute that mortgagor may redeem any time within ten years from last recognition by mortgagee of right of redemption. However, security deed, with power of sale is generally used in place of mortgage.

Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is no state building code. There are laws requiring certificates of qualifications for architects and registration of professional engineers, requiring examination of plumbers and steamfitters in certain counties, placing license taxes on electrical contractors; providing safeguard for workmen on building construction; requiring fire escapes under certain conditions; and otherwise regulating construction. Many specific powers are contained in local charters and acts. There is a state fire inspector who makes investigations and has other activities. Forty-three municipalities of 2500 population and over are reported to have building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Special planning enabling acts are enacted for certain cities. (See NRPB Circular XII.)

Platting: 1933 Code, Sec. 24-2716, regulates the recording of plats.

Zoning: Laws of 1937, House Res. 89. p. 1135, amends the Constitution to enable any city or county having a population of 1,000 or more to enact zoning and planning ordinances. Adopted at Special Election June 8, 1937.

(For special zoning enabling acts pertaining to certain cities and counties, see NRPB Circular XII.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1939, Chapter 234, provides for the organization of housing authorities for cities and villages. The area of operation of an authority consists of the city or village, and the area within five miles. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Housing Cooperation Law, Laws of 1939, Chapter 233, authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Legal Investment Law, Laws of 1939, Chapter 232, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds.

A housing authority has been organized for Kimberly.

Home FinancingLaws Favorable

Short foreclosure period
(about 3 to 4 months).
State, county and local taxes,
except special assessments,
collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Laws Unfavorable

Foreclosure by court action only.
Redemption period (one year).
During the redemption period borrower
is entitled to possession.
Relatively high taxes on savings and
loan associations or shareholders.
Increased cost to lender of main-
taining tax records due to fact
that special assessments are col-
lected by a separate official.

Building Regulations

There is no state building code. There are laws requiring licensing of architects and civil engineers; providing for fire escapes and other exit facilities; dealing with various aspects of sanitation; and authorizing municipalities to regulate various features of building construction, including the height of buildings and percentage of lot occupied, size of courts and yards, and other details. Fifteen municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

IDAHO (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1935, Extra Session, Chapter 51, creates planning commissions in each city, village, county, and regional planning commissions consisting of groups of contiguous counties.

Platting: Code Annotated 49-2201, regulates the recording of plats.

Zoning: Laws of 1925, Ch. 174, as amended by Laws of 1927, Ch. 14 and Laws of 1929, Ch. 103, confers zoning powers upon cities of the first and second class. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Act, Laws of 1934, Third Special Session, H.B. 4, as amended by Laws of 1937, S.B. 408, and as further amended by Laws of 1938, First Special Session, S.B. 39 (Jones Illinois Statutes, Sections 63.01 to 63.19 (10)), provides for the creation of housing authorities for cities, villages, towns and counties. The area of operation of a city, village or town authority consists of the city, village or town and the area within three miles; the area of operation of a county authority consists of the county for which it is created. An authority has the power to issue bonds and to acquire property by eminent domain. Bonds of housing authorities of the State are legal investments for public and private funds. State Housing Act, Laws of 1933, H.B. 622, as amended by Laws of 1934, Third Special Session, H.B. 5, as further amended by Laws of 1935, H.B. 491, and as further amended by Laws of 1937, S.B. 411 (Jones Illinois Statutes, Sections 63.20 to 63.65) creates a State Housing Board. Housing Cooperation Law, Laws of 1937, S.B. 409, as amended by Laws of 1938, First Special Session, S.B. 37 (Jones Illinois Statutes, Sections 63.71 to 63.78), authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Tax Exemption Law, Laws of 1938, First Special Session, S.B. 38, deals with tax exemption. Validating Act, Laws of 1937, S.B. 410, validated the creation and establishment of housing authorities.

In *Krause et al. v. Peoria Housing Authority et al.* (19 N.E. (2d) 193 (Ill., 1939), the Supreme Court of Illinois sustained the constitutionality of the Housing Authorities and Housing Cooperation Acts and declared that the property of housing authorities is exempt from taxation.

Housing authorities have been created for Alexander County, Champaign County, Chicago, Coles County, Danville, Decatur, Galesburg, Gallatin County, Granite City, Henry County, LaSalle County, Peoria, St. Clair County and Springfield.

Limited Dividend Housing

State Housing Act, Laws of 1933, H.B. 622, as amended by Laws of 1934, Third Special Session, H.B. 5, and as further amended by Laws of 1935, H.B. 491, and Laws of 1937, S.B. 411 (Jones Illinois Statutes, Sections 63.20 to 63.65), authorizes limited dividend housing corporations to provide accommodations for families of low income or for the reconstruction of slum areas under the supervision and control of the State Housing Board. Such corporations have the power to acquire property by eminent domain only with the authorization of the Board.

ILLINOIS (Cont'd)

Home Financing

Laws Favorable

Short Period of foreclosure
(about 3 to 4 months).
No Moratorium law.
All real property taxes
collected by one collector.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only
and it is expensive.
Redemption period (15 months).
During the redemption period borrower is entitled to possession
and rents may not be secured
without the appointment of a receiver.
High taxes on savings and loan associations.

Building Regulations

There is no state building code. There are laws requiring registration of architects, structural engineers, and land surveyors and the licensing of plumbers. There are also laws dealing with fire escapes, elevators, and other features of construction. There are numerous laws regarding sanitation. Plans for tenement houses in cities of 50,000 and over must be submitted to local authorities. There are state requirements regarding exit facilities. One hundred seven municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Ill. Rev. Stats. 1935, Ch. 34, Sec. 222, p. 1054, authorizes county boards to establish building or set-back lines on or along any road or street outside corporate limits of cities, villages and incorporated towns.
Ill. Rev. Stats., 1935, Ch. 24, Sec. 519(14), p. 458, authorizes cities, villages and incorporated towns to establish building or set-back lines on or along public streets, drives or parkways.
Ill. Rev. Stats., 1935, Ch. 24, Sec. 298(1), p. 407, provides for excess condemnation in Chicago, amending Act of 1872. (Submitted to voters and subsequently adopted.)
Ill. Rev. Stats., 1935, Ch. 34, Sec. 210, authorizes creation of county planning commissions; provides that groups of counties may form regional planning commissions.

Platting: 1937 Rev. Stats. Ch. 24, Sec. 73; Ch. 109, Ch. 133, Sec. 33; Ch. 34, Sec. 25, regulate recording of plats and subdivisions.

Zoning: Laws of 1921, H.B. 184, p. 180 (Cahill Code, Ch. 24, Sec. 521) authorizes cities, villages and incorporated towns to zone. (Follows Standard Act.)
Laws of 1935, p. 689 (Rev. Stats. Ch. 24, Sec. 152i, p. 966, authorizes zoning in all counties but does not apply to agricultural lands.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Act, Acts of 1937, Chapter 207 (1938 Pocket Supplement to Burns Indiana Statutes, 1933, Sections 48-8101 to 48-8127) provides for the organization of housing authorities for cities, towns and counties. The area of operation of a city or town authority consists of the city or town and the area within ten miles; the area of operation of a county authority consists of the county for which it is organized. An authority has power to issue bonds and to acquire property by eminent domain. Housing Cooperation Act, Acts of 1937, Chapter 209 (1938 Pocket Supplement to Burns Indiana Statutes, 1933, Sections 48-8201 to 48-8209), authorizes any municipal corporation to cooperate with a housing authority or the Federal Government with regard to housing projects. Tax Exemption Law, Acts of 1937, Chapter 81 (1938 Pocket Supplement to Burns Indiana Statutes, 1933, Sections 64-216 to 64-218), provides that the property and bonds of an authority are exempt from taxation.

In *Edwards et al. v. Housing Authority of the City of Muncie, Indiana, et al.*, 19 N.E. (2) 741 (1939), the Supreme Court of Indiana sustained the constitutionality of the Housing Authorities, Housing Cooperation and Tax Exemption Acts.

Housing authorities have been organized for Alexandria, Anderson, Bluffton, Brazil, Decatur, Delaware County, Dunkirk, East Chicago, Fort Wayne, Gary, Greenfield, Hammond, Huntington, Jeffersonville, Kokomo, Lawrenceburg, Marion, Muncie, New Albany, New Castle, Richmond, Terre Haute, Vigo County and Vincennes.

Home FinancingLaws Favorable

No redemption period after sale.
 No moratorium law.
 In general, state, county and local taxes collected by one collector.
 Foreclosure relatively inexpensive.
 Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only, as extended period is required (about 13 months) since a year must elapse between filing complaint and sale.
 High Taxes on savings and loan associations.
 Increased cost to lender of maintaining tax records due to fact that certain municipalities collect local taxes independent of state and county taxes.

INDIANA (Cont'd)

Building Regulations

There is a state building code and also a state plumbing code. There is a state housing code applying particularly to tenement houses. There are laws requiring architects, engineers and surveyors to be registered to practice. There are laws governing theatre construction and regulating fire escapes. Forty-four municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1935, Ch. 268, p. 1312 (Baldwin Code, Sec. 11629-1 et seq.), authorizes creation of city planning boards; also provides for zoning. (Supplements existing planning law, Sec. 11619 et seq.) Laws of 1935, Ch. 239, p. 1239 (Baldwin Code, Sec. 5205-1), authorizes creation of county planning commissions; also provides for zoning.

Platting: Baldwin Code, Sec. 12473, 11626, 11629-9, regulates subdivision control and platting.

Zoning: Laws of 1921, Ch. 225, as amended by Laws of 1925, Ch. 125, Laws of 1939, Ch. 14 and Laws of 1937, Ch. 222 (Baldwin Code, Sec. 11654), confers zoning authority upon cities. Laws of 1923, Ch. 168, p. 470 (Baldwin Code, Sec. 11975), enables first class cities to regulate buildings and building lines. Laws of 1921, Ch. 209, p. 561, as amended by Laws of 1927, Ch. 3 (Baldwin Code, Sec. 11624), enables cities and towns to plan and provides for zoning. (Supplements Laws of 1921, Ch. 225.) Laws of 1935, Ch. 239, p. 1239, authorizes county planning and zoning.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Short period of foreclosure (about 3 months).
All real property taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
Redemption period (one year).
During the redemption period borrower is entitled to possession and rents may not be secured without the appointment of a receiver.

Building Regulations

There is no state building code. There is a state housing code and a state plumbing code. The housing code is applicable to cities having 15,000 or more population. Other cities may adopt it by ordinance. There are laws requiring the registration of architects, engineers, and land surveyors. Municipalities are authorized to adopt building regulations. Thirty-two municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1931, Ch. 151, amends Sec. 5829-a12 of the Code, 1927, relating to approval of plats so as to require the recommendation of the city plan commission with reference to proposals to vacate any street, alley or public ground.
Laws of 1927, Ch. 261, amends Ch. 117, Acts of 1925; provides for adoption by city plan commission of a comprehensive plan.

Platting: Laws of 1927, Ch. 163, as amended by Laws of 1931, Ch. 165, requires approval of plats by city council or city plan commission, where one exists, for distance of one mile from boundaries of cities of 25,000 or more.

Zoning: Laws of 1923, Ch. 134, Code of 1931, Ch. 324, Sec. 6452, p. 854, amended by Laws of 1939, H.B. 544, approved May 17, enables "any city or town" to zone. (Follows Standard Act.)
Laws of 1917, Ch. 138 found in Code of 1931, Ch. 325, p. 856, confers authority upon cities of first and second class to designate restricted residence districts. If any city zones under the 1923 Law then the 1917 Law becomes inoperative.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Limited Dividend Housing

State Housing Law, Laws of 1933, Chapter 225 (General Statutes of 1935, Sections 17-2301 to 17-2327), authorizes limited dividend housing companies to provide housing on both urban and rural areas for families of low income and to eliminate congested and insanitary housing conditions under the supervision and regulation of the State Board of Housing.

Home FinancingLaws Favorable

All real property taxes collected by one collector.

Foreclosure inexpensive.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only and an extended period is required (about 6 months).

Redemption period (18 months).

During the redemption period borrower is entitled to possession of the property and rents, and it is very difficult to obtain a receiver.

Relatively high taxes on savings and loan associations or shareholders.

Moratorium laws.

Building Regulations

There is no state building code. There is a law requiring cities of 7,000 to prescribe rules for the regulation of plumbing. There are laws requiring fire escapes, fire protection, regulating sanitary features of hotels, and requiring registration of engineers and certificates to work as plumbers. Forty-nine municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1931, Ch. 110, amending Sec. 12-701, Rev. Stats. 1923, under which governing bodies of any city may create a city plan commission.

Platting and Subdivision Control: Laws of 1929, Ch. 110, 1935 Rev. Stats., Sec. 12-705, 19-2628, relates to the subdivision and platting of land outside corporate limits of cities; approval and filing of plats. Laws of 1929, Ch. 108, as amended by Laws of 1931, Ch. 111, relates to plans and plats and deeding or dedication of streets in and near cities in which city plan commissions have been established or may hereafter be created; provides for submission to plan commission; prescribes requirements for filing of plats.

Zoning: Laws of 1939, H.B. 289, approved April 3, enables all counties to Zone.

Laws of 1939, H. B. 312, approved April 3, is a Zoning Enabling Act for townships and counties having a population between 25,000 and 40,000. Laws of 1921, Ch. 100, as amended by Laws of 1927, Ch. 110, empowers any city to enact zoning ordinances.

Public Low-Rent Housing and Slum Clearance

Municipal Housing Commission Act, Acts of 1934, Chapter 113, as amended by Acts of 1936-1937, Fourth Special Session, Chapter 11 (Baldwin's 1936 Revision of Carroll's Kentucky Statutes, Sections 2741x-1 to 2741x-15), provides for the creation of housing commissions for cities of the first, second, third, fourth and fifth classes. The area of operation of a commission consists of the city for which it is created. A commission has the power to issue bonds and to acquire property by eminent domain. The property and bonds of a commission are exempt from taxation.

In *Spahn et al. v. Stewart et al.*, 268 Ky. 97, 103 S.W. (2d) 651 (1937), the Court of Appeals of Kentucky sustained the constitutionality of the Municipal Housing Commission Act.

Housing commissions have been created for Covington, Dayton, Frankfort, Lexington, Louisville, Newport and Paducah.

Home FinancingLaws Favorable

No redemption period if property sells for more than two-thirds of its value.

No mortgage moratorium law.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only, an extended period is required (about one year) and it is relatively expensive.

Redemption period (one year) in event property is sold for less than two-thirds of its value.

High taxes on savings and loan associations.

Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

The National Board of Fire Underwriters Building Code is included by reference in Standards of Safety, the regulations of the State Fire Marshal. There is a state tenement house act regulating construction of tenements and apartment houses and a state plumbing code. There are laws requiring the registration of engineers, architects, and plumbers. Municipalities are authorized to adopt building regulations. There are miscellaneous laws regarding fire escapes and other construction details. Twenty-four municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1938, Ch. 18, enables cities of third to sixth classes to plan; includes area five miles beyond municipal boundaries. (Follows Standard City Planning Act.)

Laws of 1930, Ch. 86, (Baldwin Code of 1936, Sec. 3037), creates city and regional planning commissions with jurisdiction five miles beyond corporate limits of cities of first class. (Follows Standard City Planning Act.)

Laws of 1928, Ch. 80, (Baldwin Code of 1936, Sec. 3235f-1), provides for creation of a city planning and zoning commission for cities of second class and surrounding territory. (Substantially follows Standard Act.)

Flatting: Laws of 1928, Ch. 89, (Baldwin Code of 1935, Sec. 3562a-1), regulates filing of plats and maps for dedication of streets, ways and easements in corporate limits of cities of the 4th class. See also Code Sections 4017, 3037h-127. Laws of 1938, Ch. 18, provides for subdivision control in third to sixth class cities by plan commission, and five miles beyond city limits.

Zoning: Laws of 1938, H.B. 86, approved March 7, creates the Capital Planning and Zoning Commission and authorizes the adoption of zoning ordinances.

Laws of 1938, Ch. 17, enables cities of third, fourth, fifth and sixth classes to zone. (Follows Standard Act.)

Laws of 1930, Ch. 86, (Baldwin Code, Art. 36A, Sec. 3037h-111), follows the Standard City Planning Act--Title I is "Municipal Planning and Zoning Commissions" - Title II is "Zoning"--but in place of Section on zoning, there is inserted the Standard Zoning Enabling Act for cities of the first class. Laws of 1928, Ch. 80, (Baldwin Code, Art. 15, Sec. 3255f-1), confers zoning authority upon second class cities and adjoining counties. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Acts of 1936, No. 275, as amended by Acts of 1938, Nos. 101 and 276 (1939 General Statutes, Sections 6280.1 to 6280.26), provides for the organization of housing authorities for cities having a population of more than 20,000. The area of operation of an authority consists of the city. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The bonds of housing authorities of the State are legal investments for public and private funds. Housing Cooperation Law, Acts of 1938, No. 277 (1939 General Statutes, Sections 6280.29 to 6280.37), authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Legal Investments for Trustees Law, Acts of 1938, No. 81, Section 62 (1939 General Statutes, Section 9850.62), authorizes a trustee to invest trust funds in the obligations of housing authorities of the State. Slum Clearance Law, Acts of 1938, No. 275 (1939 General Statutes, Sections 6280.38 to 6280.48), authorizes cities to adopt ordinances providing for the repair, closing or demolition of dwellings unfit for human habitation. Validating Law, Acts of 1938, No. 278 (1939 General Statutes, Sections 6280.27 and 6280.28), validated the creation of housing authorities.

In State ex rel. Porterie v. Housing Authority of New Orleans et al., 190 La. 710, 182 So. 725 (1938), the Supreme Court of Louisiana sustained the constitutionality of the Housing Authorities and Housing Cooperation Laws:

A housing authority has been organized for New Orleans.

Home FinancingLaws Favorable

Short period of foreclosure
(about 60 to 85 days).
No redemption period.
Foreclosure relatively inexpensive.
Homesteads exempt from state,
parish and special taxes up
to \$2,000.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Laws Unfavorable

Foreclosure is by court action
only.
High taxes on savings and loan
associations.
Increased cost to lender of main-
taining tax records due to fact
that taxes are collected by
more than one official.
Moratorium Laws.

LOUISIANA (Cont'd)

Building Regulations

There is a state building code and a plumbing code. Cities of more than 50,000 are authorized to regulate building construction. Other cities are authorized to regulate certain phases of building construction. There are laws requiring the registration of architects, engineers, and surveyors, and licensing general contractors and journeymen plumbers. Twenty-one municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1928, Act No. 98, La. Gen. Stats., Ch. 10, Sec. 5800, p. 2240, authorizes municipal corporations having a population of 100,000 or more to adopt ordinances in order to condemn buildings or structures which endanger public welfare or safety and provides for removal of such at expense of owner.

La. Gen. Stats., 1932, Sec. 5506, p. 2164, authorizes cities of commission-manager form to establish a plan commission and adopt municipal plans.

Platting and Subdivision Control: Laws of 1932, Act No. 80, La. Gen. Stats., V. 2, Sec. 5627, p. 2195, prescribes methods of surveying and plotting lands into lots or plots and defines method of preparing plats thereof and recordation. Laws of 1930, Act No. 51, La. Gen. Stats., 1932, Ch. 1, Sec. 5344-47, 5629, requires all persons owning real estate in this State who desire to plat the same into squares or town lots to file in office of keeper of notarial records of the parish where the property is situated maps of such proposed towns or tracts of land before selling any part of same.

Zoning: 1921 Constitution, Art. 14, Sec. 29: "All municipalities are authorized to zone their territory; to create residential, commercial, and industrial districts, and to prohibit the establishment of places of business in residential districts."

Laws of 1926, No. 240 (Stats. of 1932, V. 2, Sec. 5478, 5766, 5788.), enables cities, towns and villages to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
No moratorium law.
Foreclosure by advertisement.
Short period of foreclosure (about 1 to 3 months).
State, county and local taxes collected by one collector.
Provision for notice to mortgagees and other lienors of tax delinquencies prior to sale.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Redemption period (one year from date of possession or first publication).

Building Regulations

There is no state building code. There is a state plumbing code. There are laws regarding prevention of fires, regulating the inspection of buildings in municipalities of more than 2000 inhabitants, and empowering municipalities to enact building codes. There is a law requiring the registration of engineers. Twenty municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1937, Ch. 127, amends the zoning enabling Act for cities, towns, and villages (R.S. Ch. 5, Sec. 137) to provide for planning and creation of planning boards.

Laws of 1929, Ch. 112 and 56, amend charter of city of Portland giving the Park Commission certain city planning powers.

Platting: 1930 R.S. Ch. 15, Sec. 21, regulates recording of plats.

Zoning: Laws of 1929, Ch. 172 (R.S. 1930, Ch. 5, Sec. 137), enables cities, towns and villages to zone.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, Chapter 517 (Code of Public General Laws, Article 44a), provides for the organization of housing authorities for cities and towns, having a population of more than 1,000, and counties. The area of operation of a city or town authority consists of the city or town and the area within ten miles; and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Housing Cooperation Law, Laws of 1937, Chapter 518 (Code of Public General Laws, Article 44b), authorizes any state public body to cooperate with a housing authority or the Federal Government with regard to housing projects. Legal Investments Law, Laws of 1939, Chapter 504, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds.

Housing authorities have been organized for Annapolis, Baltimore, Frederick and Salisbury.

Home Financing

Laws Favorable

Laws Unfavorable

Taxes on savings and loan associations negligible.
Foreclosure by advertisement.
Short period of foreclosure (about 2 months).
No moratorium law.
No redemption period.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Foreclosure is relatively expensive.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is no state building code. There is a state plumbing code. There are several county building codes; also laws requiring registration of architects and licensing of plumbers. Twelve municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1933, Ch. 599, p. 1325, Standard City Planning Enabling Act, authorizes cities and ten counties to create planning commissions.

Laws of 1929, Ch. 443, provides for city planning in Frederick; creation of a planning commission; subdivision regulations; acquisition of right to keep planned streets free from buildings. (Follows Standard Act; Regional Planning is omitted.) Laws of 1927, Ch. 448, as amended by Laws of 1929, Ch. 286 and Laws of 1931, Ch. 204, 370, and 373, creates the Metropolitan District in Prince Georges and Montgomery Counties contiguous to the District of Columbia; authorizes planning and zoning. (Follows Standard Act.)

Platting and Subdivision Control: Laws of 1931, Ch. 51, authorizes the mayor and council of Hagerstown to regulate subdivisions of land in that city and requires their approval of plats or plans.

Laws of 1937, Ch. 111, requires plats to be recorded in Anne Arundel County.

Zoning: Special zoning enabling acts for certain cities and counties. (See NRPB Circular XII.)

Public Low-Rent Housing and Slum Clearance

Housing Authority Law, Acts of 1935, Chapter 449, as amended by Acts of 1935, Chapter 485, and as further amended by Acts of 1938, Chapter 484 (1938 Supplement to Laws of Massachusetts, Chapter 121, Sections 26I to 26II), and as further amended by Acts of 1939, Chapter 26, provides for the organization of housing authorities in cities and towns. The area of operation of an authority consists of the city or town for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. A city or town is authorized to cooperate with an authority or the Federal Government with regard to housing projects. State Board of Housing Law, Acts of 1933, Chapter 364, as amended by Acts of 1935, Chapter 449, and as further amended by Acts of 1938, Chapter 485 (1938 Supplement to Laws of Massachusetts, Chapter 18, Sections 17 to 18), establishes a State Board of Housing.

Housing authorities have been organized for Boston, Cambridge, Chicopee, Fall River, Holyoke, Lawrence, Lowell, New Bedford, Somerville and Worcester.

Limited Dividend Housing

State Board of Housing Law, Acts of 1933, Chapter 364, as amended by Acts of 1935, Chapter 449, and as further amended by Acts of 1938, Chapter 485 (1938 Supplement to Laws of Massachusetts, Chapter 18, Sections 17 to 18, and Chapter 121, Sections 23 to 26H), authorizes limited dividend corporations to undertake housing projects under the supervision and control of the State Board of Housing. Such corporations have the power to acquire property by eminent domain only with the approval of the Board.

Home FinancingLaws FavorableLaws Unfavorable

No tax on savings and loan associations or their shareholders.
Foreclosures by advertisement.
Short foreclosure period (about 1 month).
No redemption period (except 3 years after foreclosure by entry).
No moratorium law.
State, county and local taxes collected by one collector.
Provision for notice to mortgagees and other lienors prior to foreclosure or redemption from tax sale.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

No laws studied appear to be unsatisfactory.

Building Regulations

There is a state building code and a state plumbing code of limited application. There are numerous laws pertaining to safety of buildings and sanitary requirements. There is a state law providing requirements for tenement houses, this law being optional for acceptance by municipalities. There are laws requiring the licensing of electricians and plumbers. The State Department of Public Safety is given many powers of inspection. Sanitation is covered by laws in regard to the Public Health Council and to powers of municipalities. Ninety-one municipalities of 2500 population and over are reported to have local building codes. Others have fire, limited ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1923, Ch. 399, creates a planning commission for the Metropolitan District of Boston.

Acts and Resolves, 1930, Ch. 168, authorizes Boston to establish and maintain an official plan.

Ann. Laws, V. 1, Ch. 41, Sec. 70-81J, authorizes plan commissions in cities and towns; those over 10,000 population, compulsory; under, optional; also provides for platting (sec. 81F). Acts and Resolves of 1931, Acts-- Ch. 33, permits the town of Amesbury planning board to act as board of survey in said town.

Platting and Subdivision Control: Ann. Laws, V. 1, Ch. 41, Sec. 81F, provides for approval of plats of subdivisions by planning board or Board of Survey.

Zoning: Laws of 1933, Ch. 269 (Code V. 1, Ch. 40, Sec. 25-30A), as amended by Laws of 1938, Ch. 133, confers zoning authority upon all cities and towns (except Boston).

Laws of 1924, Ch. 488, as amended by Laws of 1936, Ch. 240, confers zoning authority upon Boston.

Laws of 1932, Ch. 43, regulates the use, bulk and occupancy of buildings in Boston.

Public Low-Rent Housing and Slum Clearance

Housing Commission Law, Public Acts of 1933, Extra Session, No. 18, as amended by Public Acts of 1935, No. 80 (Mason's 1935 Supplement to the Compiled Laws of Michigan 1929, Sections 2607-1 to 2607-43), and as further amended by Public Acts of 1937, No. 265 (Mason's 1937 Supplement to the Compiled Laws of Michigan 1929, Sections 2607-1 to 2607-46c), and as further amended by Public Acts of 1938, Extra Session, No. 5, provides for the creation of housing commissions for cities and villages as agents of such cities and villages. The area of operation of a commission is limited to the city or village for which it is created. A city or village has the power to issue housing bonds and to acquire property by eminent domain for housing projects. Housing Cooperation Law, Public Acts of 1937, No. 293 (Mason's 1937 Supplement to Compiled Laws of Michigan 1929, Sections 2607-51 to 2607-60), as amended by Public Acts of 1938, Extra Session, No. 6, authorizes any state public body to cooperate with a city or village or a housing commission or the Federal Government with regard to housing projects. Housing projects, being the property of a city or village, are exempt from taxation (Compiled Laws of Michigan 1929, Section 3395). Housing bonds of a city or village are exempt from taxation pursuant to the Housing Commission Law.

Housing commissions have been created for Dearborn, Detroit, Flint and Lincoln Park.

Home Financing

Laws Favorable

Taxes on savings and loan associations negligible.
Foreclosure by advertisement may be completed in a short period (about 3 months).
State, county and local taxes collected by one collector.
Provision for notice to mortgagees and other lienors of tax delinquencies prior to sale.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is relatively expensive and if conducted in court requires an extended period (a lapse of 6 months from the time of filing complaint to sale being necessary).
Redemption period (6 months from date of recording commissioner's deed in case of court foreclosures, and one year from date of deed in case of foreclosures by advertisement).
During the redemption period borrower is entitled to possession and rents, and it is very difficult to secure a receiver.
Moratorium laws.

Building Regulations

There is no state building code. There is a state housing code. There are laws requiring the registration of architects and engineers and the licensing of plumbers. Miscellaneous state requirements are concerned with fire escapes and various safeguards against fire, including authority of the State Fire Marshal over fire hazards. Municipalities are granted the power to make ordinances for the prevention of fire hazards and to provide for proper sanitation. They may also prescribe plumbing regulations not below the state minimum. Seventy municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Public Laws of 1923, No. 116, as amended (Mich. Stats. Ann. 5.2411), authorizes townships' boards to make improvements in certain platted lands and in unplatted lands adjacent thereto outside of incorporated villages.

Public Acts of 1931, Act No. 285, provides for municipal planning; creation of planning commissions; regulation and subdivision of land; penalties for violation of provisions. This is a municipal planning enabling Act, which is based on the Standard City Planning Enabling Act. It does not, however, include provisions in regard to buildings in mapped streets and regional planning.

Platting: Public Laws of 1929, No. 172, as amended by Laws of 1939, Act 302, (Mich. Stats. Ann. 5.2007, 26.431), regulates recording of plats and control of subdivisions. (See also Acts of 1931, Act No. 285.)

Zoning: Laws of 1921, Act 348, (1929 Comp. Stats. V. 1, Sec. 2633), enables cities and villages to zone.

Laws of 1931, Act 285, enables cities and villages to plan and zone. Laws of 1935, Act 44 (amending Laws of 1929, Ch. 79, as amended by Laws of 1933, Ch. 118), amends the township zoning enabling Act to provide for county zoning.

Laws of 1937, Act 302, as amended by Laws of 1939, Public Act 69, enables townships, having a population of 1500 or more, or those adjacent to cities having a population of 40,000 or more, to zone.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Foreclosure by Advertisement.
Short period of foreclosure (about 8 weeks by advertisement, 3 months in court action).
All real property taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90 % of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Redemption period (one year).
Moratorium law and laws limiting deficiency judgments.

Building Regulations

There is no state building code. There is a state housing act regulating various features of building construction and a state plumbing code. There is a law requiring the licensing of engineers, architects and land surveyors. There is a law requiring the registration of electricians. There is a law requiring the licensing of plumbers in municipalities of 5,000 population or over. There is a law requiring the licensing of steam fitters. There are laws empowering municipalities of various classes to regulate building construction. Thirty-nine municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

MINNESOTA (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1937, Ch. 287, authorizes cities to carry out municipal plans, including platting regulations. Laws of 1929, Ch. 176, as amended by Laws of 1931, Ch. 163, authorizes zoning in cities of the second, third and fourth classes, and villages; prescribes powers of plan commissions. Laws of 1919, Ch. 292, creates a City Planning Department for Minneapolis.

Platting: Laws of 1929, Ch. 225, as supplemented by Laws of 1937, Ch. 287, provides for the control and regulation of platting of subdivisions of land, and laying out of streets and other ways in certain counties and adjoining cities of the first class.

Zoning: Laws of 1915, as amended by Laws of 1921, Ch. 217; 1923, Ch. 364; 1923, Ch. 133; 1925, Ch. 284; 1925, Ch. 122; 1929, Ch. 340, 1931, Ch. 290; 1937, Ch. 239; 1939, Ch. 187; enables cities of the first class to zone. (Follows Standard Act.)

Laws of 1929, Ch. 176, as amended by Laws of 1931, Ch. 163, enables cities of the second, third, and fourth classes, and villages and cities operating under home rule charters, to zone.

Laws of 1935, Ch. 376, 235, and 35, supplements Ch. 176, Laws of 1929, enabling second and third class cities and villages to zone.

Laws of 1936, Special Session, Ch. 35, is a supplemental Act conferring zoning authority upon second class cities.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Act, Laws of 1938, Chapter 338 (1938 Supplement to Code of 1930, Chapter 122E, Sections 1574 to 1601), provides for the organization of housing authorities for cities and counties. The area of operation of a city authority consists of the city and the area within five miles; and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The bonds of housing authorities of the State are legal investments for public and private funds. Slum Clearance Law, Laws of 1938, Chapter 337 (1938 Supplement to Code of 1930, Chapter 50, Sections 150 to 158), authorizes cities, towns and villages to adopt ordinances providing for the repair, closing or demolition of dwellings unfit for human habitation.

Housing authorities have been organized for Biloxi, Hattiesburg, Laurel, McComb and Meridian.

Home FinancingLaws Favorable

Foreclosure by advertisement.
Short period of time to foreclosure (about 3 weeks).
No redemption period.
Homesteads exempt from taxation up to \$1,000.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Laws limiting deficiency judgments.
High taxes on savings and loan associations.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is no state building or plumbing code. There is a law requiring the registration of architects and engineers. There are laws regulating fire escapes and other exists and delegating certain regulatory powers over building construction to municipalities. Thirteen municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

MISSISSIPPI (Cont'd)

Planning, Platting and Zoning

Local Planning: No Law.

Platting: Laws of 1930, Code Sec. 7150, regulates recording of plats.

Zoning: Laws of 1924, Ch. 195, as amended by Laws of 1938, H.B. 30, approved February 24, confers zoning authority upon municipalities of 1,500 inhabitants or over. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1939, H.B. 6, provides for the organization of housing authorities for cities and counties having a population of 600,000 or more. The area of operation of an authority consists of the city or county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property of housing authorities is exempt from taxation pursuant to Article X, Section 6 of the State Constitution.

Home FinancingLaws Favorable

Foreclosure by advertisement.
Short period of foreclosure
(about 2 months).
No moratorium law.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Laws Unfavorable

Foreclosure is relatively expensive.
Redemption period (one year but
conditioned on posting statutory
bond).
High taxes on savings and loan
associations.
Increased cost to lender of main-
taining tax records due to fact
that taxes are collected by more
than one official.

Building Regulations

There is no state building code. There are plumbing regulations applying to counties between 200,000 and 400,000 population. There is a law requiring plumbers in cities over 15,000 to have a certificate. There are regulations regarding fire escapes and laws empowering cities to regulate certain phases of building construction. Forty-four municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: R.S. 6420, 7180--grant to Boards of Public Works and Improvements powers somewhat analogous to planning commissions.

Platting: 1929 R.S., Ch. 67, Sec. 1180, 6437--General Platting Law applicable to all cities, towns, villages, and certain counties.
(See also Constitution, Art. IV, Sec. 53 (7)).

Zoning: Laws of 1925, H.B. 295, p. 307, as amended by Laws of 1927, H.B. 233, p. 355, R.S. Sec. 7259, enables any city, town or village, excepting in counties having a population of 15,000, to zone.
(Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1935, Chapter 140 (Revised Code of Montana, Sections 5309.1 to 5309.27), provides for the creation of housing authorities for cities of the first and second classes. The area of operation of an authority consists of the city and the area within ten miles. An authority has the power to issue bonds and to acquire property by eminent domain. The bonds of housing authorities in the State are legal investments for public and private funds.

Housing Cooperation Law, Laws of 1935, Chapter 138 (Revised Code of Montana, Sections 5309.28 to 5309.34), authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects.

In *Rutherford et al. v. City of Great Falls et al.*, 86 Pac. (2d) 656 (Mont., 1939), the Supreme Court of Montana sustained the constitutionality of the Housing Authorities and Housing Cooperation Laws and declared that the property of a housing authority is exempt from taxation. In *State of Montana ex rel. Helena Housing Authority v. City Council of City of Helena, Montana, et al.*, 90 Pac. (2d) 514 (Mont., 1939), the Supreme Court held that when an authority is created in Montana, the city for which it is created has a legal duty to appropriate the money estimated to be necessary for the first year's expenses of the authority.

Housing authorities have been created for Anaconda, Billings, Butte, Great Falls and Helena.

Home Financing

Laws Favorable

Foreclosure by advertisement.
Short period of foreclosure
(about 3 months).
Foreclosure relatively inexpensive.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Laws Unfavorable

Redemption period (one year). During
the redemption period borrower
is entitled to possession and it
is difficult to obtain a receiver.
Relatively high taxes on savings
and loan associations or shareholders.
Moratorium laws and laws limiting
deficiency judgments.
Increased cost to lender of maintaining
tax records due to fact
that taxes are collected by more
than one official.

Building Regulations

There is no state building or plumbing code. There are laws requiring the licensing of architects and plumbers. There are laws requiring and regulating the use of fire escapes, regulating sanitation in hotels and tenement houses and giving the State Fire Marshal authority over hazards. Fifteen municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

MONTANA (Cont'd)

Planning, Platting and Zoning

Local Planning: No Law.

Platting: Laws of 1929, Ch. 54; 1935 Code, Sec. 5308, 4980, regulates the recording of plats.

Zoning: Laws of 1929, Ch. 136, confers zoning authority upon cities and towns. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Metropolitan Cities Housing Authorities Law, Laws of 1935, Chapter 29 (1937 Supplement to Compiled Statutes of 1929, Sections 14-1401 to 14-1416) and Laws of 1937, Chapter 94, (1937 Supplement to Compiled Statutes of 1929, Sections 14-1419 to 14-1437), provides for the organization of housing authorities for cities in the metropolitan class. The area of operation of an authority consists of the city and the area within ten miles. An authority has the power to issue bonds and to acquire property by eminent domain. First Class Cities Housing Authorities Law, Laws of 1937, Chapter 90 (1937 Supplement to Compiled Statutes of 1929, Sections 19-1101 to 19-1124), provides for the organization of housing authorities in first class cities, including any first class city having a population of more than 5,000 and less than 100,000, and all counties. The area of operation of a city authority consists of the city and the area within five miles; and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. Housing Cooperation Law, Laws of 1937, Chapter 91 (1937 Supplement to Compiled Statutes of 1929, Sections 71-3501 to 71-3509), authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Tax Exemption Law, Laws of 1937, Chapter 93 (1937 Supplement to Compiled Statutes of 1929, Sections 71-3510 to 71-3512), exempts the property and bonds of an authority from taxation. Validating Law, Laws of 1937, Chapter 92 (1937 Supplement to Compiled Statutes of 1929, Sections 14-1417 and 14-1418), validated the creation of metropolitan housing authorities established under the provisions of Laws of 1935, Chapter 29 (1937 Supplement to Compiled Statutes of 1929, Sections 14-1401 to 14-1416).

A housing authority has been organized for Omaha.

Home Financing

Laws Favorable

Short period of foreclosure
(about 3 months).
No redemption period.
All real property taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only. Foreclosure period is relatively short except that sale may be stayed nine months after decree.
Laws limiting deficiency judgments.
Relatively high taxes on savings and loan associations or shareholders.

NEBRASKA (Cont'd)

Building Regulations

There is no state building code. There are laws requiring the registration of architects and engineers and the licensing of plumbers. There are laws regulating certain features of building construction and empowering municipalities to establish building regulations. There are laws regulating plumbing in cities. There is a law giving the State Fire Marshal authority over hazards as well as exits. The legislative bodies of all cities are authorized to adopt plumbing, electrical, fire prevention, building, and any standard code containing regulations printed in book or pamphlet form, by reference. Nineteen municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1937, Ch. 39, authorizes cities and villages to plan.

Platting: Laws of 1929, Ch. 49, authorizes cities of the first class having a population of over 40,000 and less than 100,000 to regulate subdividing and platting. (See 1930 Code, Sec. 15-1001.)

Zoning: Laws of 1927, Ch. 43 (C.S. 1929, Ch. 19, Art. 9, p. 364), enables first class cities (5,000 to 25,000 population), second class cities, and villages to zone. (Follows Standard Act.)

Laws of 1921, Ch. 116, as amended by Laws of 1925, Ch. 45, (Comp. Stats. Ch. 14, Sec. 40), confers zoning authority upon cities of the metropolitan class.

Laws of 1929, Ch. 49 (C.S. Ch. 15, Art. 10, p. 2621), enables first class cities to zone.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Short foreclosure period (about 30 days to 6 weeks).
No moratorium law.
All real property taxes collected by one collector.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure of Mortgages as distinguished from deeds of trust, is by court action only.
Redemption period (one year) from sale held under court foreclosure. During such redemption period, borrower is entitled to possession and it is difficult to secure a receiver.

Building Regulations

There is no state building or plumbing code. There is a law requiring the registration of engineers. There is a law delegating the authority to establish building regulations to municipalities. Four municipalities of 2,500 population and over are reported to have local building codes.

Planning, Platting and Zoning

Local Planning: Compiled Laws of 1929, Sec. 1267, General City Planning Enabling Act.

Platting: Laws of 1919, Ch. 232, as amended by Laws of 1929, Ch. 20 (CL. 1929, Secs. 1267, 1355), restores, establishes, corrects, etc. in certain contingencies, city and town plats; determines real property rights affected thereby.

Laws of 1905, Chapter 223, as amended by Laws of 1929, Ch. 187 (C.L. 1935, Sec. 1341), amends Act of March 13, 1905, relative to platting; provides for accurate map and description of plats.

Zoning: Laws of 1923, Ch. 126 (C.S. 1929, Vol. 1, Sec. 1274), confers zoning authority upon all cities and towns. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home Financing

Laws Favorable

Laws Unfavorable

Tax imposed on savings and loan associations is slight.
Foreclosure by advertisement.
Short foreclosure period (about 1 month).
No redemption period (except one year from date of possession if foreclosure is by entry).
All real property taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Moratorium Laws.

Building Regulations

There is no state building code. There are laws requiring plumbers to be licensed, authorizing the State Board of Health to establish plumbing regulations and permitting local authorities to establish more stringent plumbing regulations. The Commissioner of Labor is authorized to set standards regarding egress from factories and the State Board of Health is authorized to set such standards for other buildings. Twelve municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1935, Ch. 55, p. 81, as amended by Laws of 1937, Ch. 27 and 28, authorizes creation of city, town, village, district and regional planning boards.

Platting: No law.

Zoning: Laws of 1925, Ch. 92, as amended by Laws of 1933, Ch. 36, enables cities and towns to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Local Housing Authorities Law, Laws of 1938, Chapter 19, as amended by Laws of 1938, Chapter 210 (1938 Supplement to Revised Statutes of 1937, Sec. 55:14A-1 to 55:14A-26), provides for the creation of housing authorities for municipalities and counties. A regional housing authority may be created for two or more municipalities. The area of operation of an authority consists of the municipality or county or two or more municipalities for which an authority is created. An authority has power to issue bonds and to acquire property by eminent domain. The property and bonds of housing authorities are exempt from taxation. The bonds of housing authorities of the State are legal investments for public and private funds. State Housing Authority Law, Laws of 1933, Chapter 444, (Revised Statutes of 1937, Sections 55:14-1 to 55:14-13) and Laws of 1933, Chapter 78 (Revised Statutes of 1937, Sec. 55:15-1 to 55:15-31), establishes the state housing authority and defines its functions and powers. Housing Cooperation Law, Laws of 1938, Chapter 20, as amended by Laws of 1938, Chapter 211 (1938 Supplement to Revised Statutes of 1937, Sec. 55:14B-1 to 55:14B-8), authorizes any public body to cooperate with an authority or the Federal Government with regard to housing projects. Eminent Domain Law, Laws of 1938, Chapter 21 (1938 Supplement to Revised Statutes of 1937, Sec. 20:1-30 and 20:1-36), provides for the proceedings to be observed in the exercise of power of eminent domain. Validating Law, Laws of 1939, Chapter 187, validated the creation of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

Housing authorities have been created for Asbury Park, Atlantic City, Bayonne, Beverly, Bridgeton, Camden, Clementon, Elizabeth, Hackensack, Harrison, Jersey City, Kenilworth, Long Branch, Montclair, Morristown, Newark, New Brunswick, North Bergen, Ocean City, Orange, Passaic County, Perth Amboy, Princeton, Summit and Trenton.

Limited Dividend Housing

Public Housing Law, Laws of 1933, Chapter 78 (Revised Statutes of 1937, Sec. 55:15-1 to 55:15-31) and Laws of 1933, Chapter 444 (Revised Statutes of 1937, Sec. 55:14-1 to 55:14-13), authorizes limited dividend housing corporations to provide housing for families of low income or for the reconstruction of slum areas under the regulation and supervision of the State Board of Public Utilities. Such corporations have the power to acquire property by eminent domain only with the approval of the Board. Such corporations are exempt from all State and local taxes except a fee for incorporation and a tax of 10% on their gross income.

NEW JERSEY (Cont'd)

Home Financing

Laws Favorable

Taxes on savings and loan associations negligible.
No redemption period unless action for deficiency judgment is brought.
All real property taxes collected by one collector.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only, a somewhat extended period is required (about 3-1/2 to 6 months), and it is expensive.
Redemption period (6 months). A period of redemption exists, however, only in event a deficiency judgment is entered.
Laws limiting deficiency judgments.

Building Regulations

There is a state building code regulating the construction of places of public entertainment. There is also a state building code regulating public school construction. There is a construction safety code. There is no state plumbing code. There is a state tenement house law. There are laws regulating fire escapes and requiring the registration of architects, engineers, and land surveyors. Municipalities are authorized to enact ordinances to regulate building construction. One hundred forty-three municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1935, Ch. 251, Code of 1937, 40:27-1, authorizes creation of county and regional planning boards. (Follows certain provisions of Standard Act.)
Laws of 1930, Ch. 235, Code of 1937, 40:55, enables municipalities other than counties to prepare, adopt and enforce master plans, official maps and subdivision plats for municipal planning purposes. (Follows Standard City Planning Enabling Act.)

Platting: 1937 R.S. 40:27-7, 40:55-12, regulate platting and subdivisions.

Zoning: Laws of 1927, Constitutional Amendment (Art. 4, Sec. 6, par. 6), authorizes the Legislature to enact general laws under which municipalities, other than counties, may adopt zoning ordinances.
Laws of 1928, Ch. 274, enables all municipalities to zone. (Follows Standard Act.) See also Laws of 1930, Ch. 235.

Public Low-Rent Housing and Slum Clearance

Municipal Housing Law, Laws of 1939, Chapter 193, provides for the creation of housing authorities for cities, towns and municipalities having a population of 3,000 or more. The area of operation of an authority consists of the city, town or municipality for which it is created. A city, town or municipality has the power to issue housing bonds and to acquire property by eminent domain for housing projects. The housing bonds of a city, town or municipality are legal investments for public and private funds. Any state public body is authorized to cooperate with a city, town or municipality or an authority or the Federal Government with regard to housing projects. A State Housing Authority Board is created. Housing projects, being the property of a city, town or municipality, are exempt from taxation pursuant to Article VIII, Section 3, of the State Constitution.

Home FinancingLaws Favorable

Tax imposed on savings and loan associations is slight.
 No moratorium law.
 State, county and local taxes, except special assessments, collected by one collector.
 Foreclosure relatively inexpensive.
 Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only and a somewhat extended period is required (about 6 months).
 Nine-month redemption period, but purchaser at foreclosure sale is entitled to possession during such period.
 Increased cost to lender of maintaining tax records due to fact that special assessments are collected by a separate official.

Building Regulations

There is no state building or plumbing code. There are laws requiring the registration of architects, engineers, and surveyors. Municipalities are empowered to regulate building construction. Cities, towns, and villages are empowered to adopt a building code by reference. Fifteen municipalities of 2,500 population and over are reported to have local building codes.

Planning, Platting and Zoning

Local Planning: No law.

Platting: Laws 1929, C.S. Sec. 90-222; 208, regulating land plats and subdivisions. Laws of 1939, Ch. 84, 130, regulating recording and approval of plats of subdivisions.

Zoning: Laws of 1927, Ch. 27 (C.S. 1929, Ch. 90, Art. 33, p. 1231), to enable cities, towns and villages to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Public Housing Law, Laws of 1939, Chapter 808, sets forth the powers, duties and privileges of housing authorities for cities, towns and villages. The area of operation of an authority consists of the city, town or village for which it is created. An authority may issue bonds and acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Any municipality, the State or the Federal Government is authorized to cooperate with an authority, any municipality, the State, or the Federal Government in certain respects with regard to housing projects. The bonds of housing authorities of the State are legal investments for public and private funds. Housing Debt Law, Laws of 1939, Chapter 806, authorizes the incurring of a state debt for housing. Housing Subsidy Law, Laws of 1939, Chapter 807, authorizes the making of contracts for periodic subsidies and appropriates a certain sum for current subsidies. Housing Division Law, Laws of 1939, Chapter 809, relates to the superintendent of the division of housing. Beginning January 1, 1939, the State Constitution (Article X, Sec. 5), requires a special act of the Legislature for the creation of a housing authority. Prior to 1939, housing authorities were created for cities, first-class villages and counties pursuant to the Municipal Housing Authorities Law, Laws of 1934, Chap. 4, as amended by Laws of 1935, Chap. 310 (McKinney's Consolidated Laws of New York, Vol. 65, Sec. 2310 to 2328), as further amended by Laws of 1938, Chapters 218, 395 and 461 (1938 Pocket Part of McKinney's Consolidated Laws of New York, Vol. 65, Sec. 2311 to 2327). The Municipal Housing Authorities Law was repealed and replaced, as of July 1, 1939, by the Public Housing Law of 1939. The State Housing Law was similarly repealed and replaced by the Public Housing Law of 1939. The State Board of Housing was thereby replaced by a State Superintendent of Housing. Article XVIII on Housing was added to the State Constitution effective January 1, 1939. Validating Law, Laws of 1935, Chapters 311, 312 and 313, validated the creation of housing authorities for New York City, Buffalo and Schenectady, respectively.

In *New York City Housing Authority v. Muller et al.*, 270 N.Y. 333, 1 N.E. (2d) 153 (1936), the Court of Appeals of New York sustained the validity of the exercise of the power of eminent domain pursuant to the Municipal Housing Authorities Law.

Housing Authorities have been created for Buffalo, Lackawanna, New York City, Peekskill, Port Jervis, Schenectady, Syracuse, Tarrytown, Tuckahoe, Utica, and Yonkers.

NEW YORK (Cont'd)

Limited Dividend Housing

Public Housing Law, Laws of 1939, S.B. 936, authorizes limited dividend companies to provide low cost housing under the supervision, regulation and control of the State Superintendent of Housing. Such companies have the power to acquire property by eminent domain. Housing companies are exempt from state taxation, Bonds and dividends of such companies are exempt from all taxation. Municipalities are authorized to exempt such companies from municipal taxation for not more than fifty years. The Public Housing Law of 1939 (effective July 1, 1939) repealed and replaced the State Housing Law, including its provisions on limited dividend corporations (McKinney's Consolidated Laws of New York and 1938 Pocket Part, Vol. 65, Sec. 2251 to 2303 and 2340 to 2343).

Home Financing

Laws Favorable

No tax on savings and loan associations except income tax on shareholders.
Short period of foreclosure (about 90 days).
No redemption period.
Foreclosure by advertisement Permitted (but not advisable).
State, county and local taxes, with certain exceptions, collected by one collector.
Effective supervision of subdivision lot sales to prevent fraud and wild cat development.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure by court action is necessary as a practical matter and is expensive.
Moratorium laws and laws limiting deficiency judgments.
Increased cost to lender of maintaining tax records due to fact that certain school taxes and special assessments are collected by various local authorities.

Building Regulations

There is no state building code, although a draft of one has been prepared. There are state requirements for the construction of factory buildings and places of public assembly. Laws in effect require the registration of architects and engineers. There are numerous laws regarding safety during construction, exit facilities, and other features of construction. There is a Multiple Dwelling Law, applying to cities of 800,000 population and over, which takes up in detail the items customarily included in housing laws. There is no state plumbing code; there is, however, a standard plumbing code recommended by the State Health Department. There is a law requiring the licensing of plumbers in cities. There are laws granting municipalities the power to limit the height of buildings and deal with building regulation. One hundred twenty-nine municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Consolidated Laws, Ch. 62, provides for planning in towns.

Consolidated Laws, Ch. 64, provides for planning in villages.

Consolidated Laws, Ch. 21, provides for planning in cities.

(See also NRPB Circular XII for list of citations for special planning enabling Acts.)

Platting: Laws of 1939, Ch. 590 (amending Consolidated Laws, Ch. 62, Sec. 277), establishes additional requirements for platting and subdivision control.

Laws of 1936, Ch. 868, regulates platting and subdividing.

Laws of 1938, Ch. 649, amends the real property law (Consolidated Laws, Ch. 50) relative to payment of taxes prior to filing subdivision maps.

Laws of 1938, Ch. 260, amends public health law relative to filing of maps or plats showing subdivisions of land in towns.

(For additional laws see NRPB Circular XII.)

Zoning: Laws of 1926, Ch. 714, (Cahill Consolidated Laws, Ch. 61, Sec. 260), as amended by Laws of 1939, Ch. 444, enables towns to zone. (Follows Standard Act.)

Laws of 1923, Ch. 564 (Cahill Consolidated Laws, Ch. 63), enables villages to zone. (Follows Standard Act.)

Laws of 1920, Ch. 743 (Cahill Consolidated Laws, Ch. 2), enables cities to zone.

NORTH CAROLINA (Cont'd)

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Action by advertisement.
Short period of foreclosure (about 40 days).
No redemption period.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Laws limiting deficiency judgments.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is a law requiring the establishment of a state building code. There are other laws regulating building construction and fire escapes, requiring the registration of architects, engineers, and land surveyors and requiring the licensing of general contractors, heating and plumbing contractors, tile contractors and electrical contractors; empowering cities to regulate building construction and plumbing work; and authorizing cities of more than 5,000 population to adopt ordinances relating to the repair, closing and demolition of dwellings unfit for human habitation. Twenty-four municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1921, Ex. Ses., Ch. 169 and 246, Public and Private Laws, are City Planning Laws authorizing zoning in any city or town in the counties of Buncombe, New Hanover and Wake.

Laws of 1919, Ch. 23 (1935 Code, Sec. 2643), authorizes all cities and towns to create planning boards to make careful study of resources and needs of the city or town.

Platting: Laws of 1929, Ch. 186 (1935 Code, Sec. 2793 (e)), extends the jurisdiction of towns and cities to include the laying out of streets and sidewalks in proposed subdivisions within one mile of corporate limits of towns and cities; provides for approval of maps by said towns and cities.

Zoning: Laws of 1923, Ch. 250 (1931 Code, Ch. 56, Art. 11 (c) Sec. 2776 (r)), enables cities and towns to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Public Laws of 1935, Chapt. 456 (Code of 1935, Sec. 6243 (1) to 6243 (29)), as amended by Public Laws of 1938, Extra Session, Chap. 2, and as further amended by Public Laws of 1939, Chap. 150, provides for the creation of housing authorities for cities and towns of more than 5,000 inhabitants. The area of operation of an authority consists of the city or town and the area within ten miles. An authority has the power to issue bonds and to acquire property by eminent domain. The bonds of housing authorities of the State are legal investments for public and private funds. The property and bonds of an authority are exempt from taxation. Housing Cooperation Law, Public Laws of 1935, Chap. 408 (Code of 1935, Sec. 6243 (30) to 6243 (37)), as amended by Public Laws of 1939, Chap. 137, authorizes any city, town, village, county, the State or any other subdivision or agency of the State to cooperate with an authority or the Federal Government with regard to housing projects. Eminent Domain Law, Public Laws of 1935, Chap. 409 (Code of 1935, Sec. 6243 (38) to 6243 (41)), authorizes any Federal agency or any corporation receiving financial aid from the United States or any agency thereof to acquire real property by eminent domain for a housing project. Public Works Eminent Domain Law, Public Laws of 1935, Chapt. 470, (Code of 1935, Sec. 1733 (1) to 1733 (24)), authorizes any Federal agency, state public body or public corporation to acquire real property by eminent domain for a public works project which is financed in whole or in part by a Federal agency or state public body. Slum Clearance Law, Public Laws of 1939, Chap. 287, as amended by Public Laws of 1939, Chapt. 386, authorizes cities and towns having a population of more than 5,000 to adopt ordinances providing for repair, closing and demolition of dwellings unfit for human habitation. Validating Law, Public Laws of 1939, Chap. 118, validated the creation of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

In *Wells et al. v. Housing Authority of Wilmington, North Carolina and the City of Wilmington, North Carolina*, 213 N.C. 744, 197 S.E. 693 (1938), the Supreme Court of North Carolina sustained the constitutionality of the Housing Authorities and Housing Cooperation Laws.

Housing Authorities have been created for Charlotte, Raleigh and Wilmington.

Limited Dividend Housing

State Housing Law, Public Laws of 1933, Chap. 384 (Code of 1935, Sec. 7128 (1) to 7128 (26)), authorizes limited dividend housing companies to provide safe and sanitary housing for families of low income under the supervision and regulation of the State Board of Housing.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, Chapter 102, provides for the organization of housing authorities for cities, having a population of more than 5,000, and counties. The area of operation of a city authority consists of the city and the area within five miles (if the city has a population of less than 5,000) or ten miles (if the city has a population of 15,000 or more); and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation.

Home FinancingLaws Favorable

No tax on savings and loan associations except income tax on shareholders.
 All real property taxes collected by one collector.
 Short period of foreclosure (about 4 months).
 Foreclosure relatively inexpensive.
 Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
 Redemption period (one year).
 During the redemption period borrower is entitled to possession and rents. A receiver may, with difficulty, be appointed during foreclosure proceedings but he has no power to collect rent during redemption period.
 Moratorium laws and laws limiting deficiency judgments.

Building Regulations

There is no state building or plumbing code. There are laws regulating fire escapes and hotel construction, requiring registration of architects and public contractors, and requiring the licensing of electricians. Cities are authorized to establish building regulations. The Commissioner of Insurance is required to enforce laws dealing with fires, including the regulation of exits. Eight municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1929, Ch. 177, authorizes villages or cities to establish official master plans; provides for the approval of plats. (Substantially follows Standard Act.)

Platting and Subdivision Control: Laws of 1929, Ch. 177, includes platting and subdivision control.

Zoning: Laws of 1923, Ch. 175, as amended by Laws of 1929, Ch. 181, enables "any city" to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authority Law, Laws of Ohio, 115-Part 2, 1933-1934, H.B. 19 (Throckmorton's Code of Ohio, Baldwin's 1936 Revision, Sections 1078-29 to 1078-41), as amended by Laws of Ohio, 1937-1938, H.B. 574, H.B. 788 and S.B. 497 (Baldwin's 1939 Service to Throckmorton's 1936 Ohio Code, Sections 1078-30, 1078-34, 1078-34a, 1078-35, 1078-42 to 1078-50, 1078-61 and 1078-61a), provides for the creation by the State Board of Housing of metropolitan housing authorities for any portion of any county that comprises two or more political subdivisions or portions thereof but is less than all the territory within the county. The area of operation of an authority consists of the area for which the authority is created. An authority has the power to issue bonds and to acquire property by eminent domain. The property of housing authorities is exempt from taxation. The bonds of housing authorities of the State are legal investments for certain public and private funds. Housing Cooperation Law, Laws of Ohio, 1937-1938, H.B. 575, as amended by Laws of Ohio, 1937-1938, S.B. 497 (Baldwin's 1939 Service to Throckmorton's 1936 Ohio Code, Sections 1078-51 to 1078-58), authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Validating Act, Laws of Ohio, 1937-1938, H.B. 576 (Baldwin's 1939 Service to Throckmorton's 1936 Ohio Code, Sections 1078-59 and 1078-60), validated the creation and establishment of metropolitan housing authorities.

In State of Ohio, ex rel. Ellis v. Sherrill, Docket No. 27410 (June 21, 1939), the Supreme Court of Ohio sustained the constitutionality of the Housing Authorities and Housing Cooperation Laws.

Housing authorities have been created for Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Hamilton, Lorain, Mansfield, Portsmouth, Toledo, Warren, Youngstown and Zanesville.

Limited Dividend Housing

State Housing Law. Laws of Ohio, 114, Part 2, H.B. 8 (Throckmorton's Code of Ohio, Baldwin's Revision. Sections 1078-1 to 1078-28), authorizes limited dividend housing corporations to provide housing for families of low income and to eliminate congested and insanitary housing conditions under the supervision, regulation and control of a State Board of Housing. Such corporations have the power to acquire property by eminent domain only with the authorization of the Board.

Home Financing

Laws Favorable

No redemption period.
All real property taxes collected by one collector.
Foreclosure inexpensive
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only and an extended period is required (minimum 4 months, may extend to 10 months or more).
Moratorium Laws.
Relatively high taxes on savings and loan associations or shareholders.

Building Regulations

There is a state building code dealing in detail with numerous features of construction. There is a state plumbing code. There are laws requiring the licensing of architects and engineers and providing for the licensing of electrical contractors and plumbers in cities. There are laws empowering municipalities to adopt building regulations of their own. Sixty-nine municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1923, p. 310, (Baldwin's Code of 1936, Sec. 4366-1), authorizes creation of city, village, and regional planning commissions with general planning powers. (Follows certain features of the Standard Act.)

Platting: 1936 Baldwin Code, Sec. 4366-3, 3586, 3614--General platting law providing for approval of plats and subdivisions by the planning commission.

Zoning: Laws of 1919, p. 1175 (Baldwin Code, Sec. 4366-7 to 4366-12), enables any municipality to zone.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home FinancingLaws Favorable

Tax imposed on savings and loan associations is slight.

No redemption period.

All real property taxes collected by one collector.

Foreclosure relatively inexpensive.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Homestead exempt from taxation up to \$1,000.

Laws Unfavorable

Foreclosure is by court action only and an extended period is required (9 to 12 months --6 months must elapse from date of judgment until date of sale).

Building Regulations

There is no state building or plumbing code. There are laws regulating building construction and fire escapes and requiring registration of architects and engineers. Master and journeymen plumbers in cities are required to have a certificate. Cities are empowered to establish plumbing regulations. Forty-two municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1923, Ch. 182 (Okla. Stats. 1931, V.1, Art. 8, Sec. 6158), establishes a regional (to include a municipality and adjacent territory within 3 miles) planning commission; provides for powers and duties, including approval of plats.

Laws of 1923, Ch. 177 (Okla. Stats. 1931, Art. 9, Sec. 6165) authorizes cities or towns to create planning commissions.

Platting: Statutes of 1935, Title II, Sec. 511, relates to city and town platting and rules for recording.

Zoning: Laws of 1923, Ch. 178, enables cities and incorporated villages to zone. (Follows Standard Act.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, Chapter 442, as amended by Laws of 1939, Chapter 441, provides for the organization of housing authorities for cities and towns, having a population of more than 7,500, and counties. The area of operation of a city or town authority consists of the city or town and the area within five miles (if the city or town has a population of less than 10,000) or ten miles (if the city or town has a population of 10,000 or more); and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Housing Cooperation Law, Laws of 1937, Chapter 441, authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects.

An authority has been organized in Clackamas County.

Home FinancingLaws Favorable

Tax imposed on savings and loan associations is slight.
 Short period of foreclosure (about 2 months).
 State, county and local taxes, except special assessments, collected by one collector.
 Foreclosure relatively inexpensive.
 Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
 Redemption period (one year) but purchaser is entitled to immediate possession
 Moratorium laws (of an advisory type under which the legislature suggests to courts of state withholding and postponement of decree under certain circumstances).
 Increased cost to lender of maintaining tax records due to fact that special assessments are collected by a separate official.

Building Regulations

There is no state building code. There is a state plumbing code. There are laws regulating fire escapes, requiring registration of architects and engineers, and empowering the State Fire Marshal to regulate fire hazards. Cities are authorized to establish building regulations. Cities are also authorized to adopt building, plumbing and electrical regulations which have been printed as a code in book form, by reference. Nineteen municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

OREGON (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1919, Ch. 311, as amended by Laws of 1939, Ch. 338, provides for establishment, government, and maintenance of City Planning Commission within municipalities; prescribes powers and duties.

Platting: Laws of 1931, Ch. 227, provides a penalty for sale of real property within a subdivision hereafter platted within the jurisdiction of the planning commission of any city by use of a plat before the same has been approved by the planning commission. (See Code, Sec. 56-1612, 56-7, 63-305.)
Laws of 1929, Ch. 374, amends Sec. 3823, Oregon Laws, as amended by Sec. 4, Ch. 253, General Laws of Oregon, 1925, relating to plats outside of the incorporated cities and towns, and the vacation of a road, highway, street or alley.

Zoning: Laws of 1919, Ch. 300 (Code, V, 3, Ch. 17, Sec. 56-1701 enables incorporated cities and towns to zone. (See also Code, Sec. 56-1601.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, P.L. 955, No. 265 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 35, Sections 1541 to 1565), as amended by Acts of 1939, No. 238, provides for the organization of housing authorities for cities of the first, second, second class A and third classes, having a population of 30,000 or more, and counties. The area of operation of an authority consists of the city or county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. State Board of Housing Law, Laws of 1937, P.L. 1705, No. 359 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 35, Sections 1501 to 1521), creates a State Board of Housing, Housing Cooperation Law, Laws of 1937, P.L. 888, No. 232 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 35, Sections 1581 to 1588), authorizes any state public body to cooperate with an authority or the Federal Government with respect to housing projects. Lease or Conveyance of Slum Areas, Laws of 1938, Special Session, No. 12 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 35, Sections 1571 to 1575) authorizes any housing authority to lease or convey a slum area to the State or any of its agencies. Lease or Acquisition of Slum Areas, Laws of 1938, Special Session, No. 11 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 71, Sections 1674 to 1678), authorizes the State or any of its agencies to lease or acquire a slum area from any housing authority. Legal Investments for Fiduciaries, Laws of 1937, P.L. 1037, Section 2 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 20, Sections 321 and 801 (18), authorizes a "fiduciary" to invest in the bonds of housing authorities in the State.

In *Dornan v. Philadelphia Housing Authority et al.*, 331 Pa. 209, 200 Atl. 834 (1938), the Supreme Court of Pennsylvania sustained the constitutionality of the Housing Authorities and Housing Cooperation Laws.

Housing authorities have been organized in Allegheny County, Allentown, Bethlehem, Chester, Delaware County, Erie, Harrisburg, McKean County, McKeesport, Misslin County, Montgomery County, Philadelphia, Pittsburgh, Reading, Schuylkill County and Scranton.

Limited Dividend Housing

State Board of Housing Law, Laws of 1937, P.L. 1705, No. 359 (1938 Pocket Part to Purdon's Pennsylvania Statutes, Title 35, Sections 1501 to 1521), authorizes limited dividend housing companies to undertake the construction of housing projects with the approval of the State Board of Housing. The State Board has the power to acquire property by eminent domain for a limited dividend housing company upon the filing by such a company of a petition with the Board certifying the need for such property for a housing project and provided that the Board determines that such property is necessary for public use.

PENNSYLVANIA (Cont'd)

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Short period of foreclosure (about 2 months).
No redemption period.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
Moratorium laws.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is a state building code for third-class cities and building regulations applying to first-class and second-class cities. There are state plumbing regulations for second and third-class cities. There are laws requiring the registration of architects, engineers, surveyors, and plumbers. One hundred eighteen municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1937, Act 434, enables counties of the second to eighth classes to plan.

Laws of 1933, No. 270, p. 1103, amends First Class Township Law, granting power to create Planning Commissions.

Laws of 1931, No. 331, Sec. 3200, authorizes creation of planning commissions in townships of first class (population of 500 to square mile) with jurisdiction three miles beyond township line.

Laws of 1931, No. 317, p. 932, authorizes creation of a city planning commission in cities of third class, to replace a department of city planning.

Laws of 1927, No. 492 and 69-- City Planning Enabling Act. (Uses main features of Standard Act except Regional Planning.) A supplement to Act for Government of Cities of the Second Class, approved March 7, 1901, creating a Department of City Planning in charge of City Planning Commission. (Applies to Pittsburgh.)

Platting and Subdivision Control: 53 Purdon Code, 13692, 14917, regulates plats and subdivisions in boroughs. (See also Sec. 13253, 3881, and 9211.)

Laws of 1937, No. 590, regulates subdividing by licensing real estate salesmen and brokers.

Laws of 1927, No. 492 and 69, and Laws of 1939, Act 58, provide for subdivision control in second class cities.

Planning, Platting and Zoning (Cont'd)

Zoning: Laws of 1937, Act 435, enables counties of second to eighth classes to enact zoning ordinances. (Follows Standard Act.)

Laws of 1937, Act 504, enables townships of second class (covers all townships not in first class) to enact zoning ordinances.

Laws of 1931, Act 317, Purdon Code 53-12198, enables third class cities to zone.

Laws of 1937, Act 69, Purdon 53-9183, enables second class cities to zone. (Follows Standard Act.)

Laws of 1929, Act 469, Purdon 53-3821, enables first class cities to zone. (Follows Standard Act.)

Laws of 1931, Act 351, Purdon 53-15731, enables first class townships (population 500 to square mile) to zone. (Follows Standard Act.)

Public-Low Rent Housing and Slum Clearance

Housing Authorities Law, Public Laws of 1935, Chapter 2255 (General Laws of 1938, Chapter 344), as amended by Public Laws of 1939, S. 103 and S. 309, provides for the creation of housing authorities for cities. The area of operation of an authority consists of the city for which it is created. An authority has the power to issue bonds but does not have the power to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The bonds of any housing authority or agency in the United States are legal investments for public and private funds. Eminent Domain Law, Public Laws of 1935, Chapter 2256, (General Laws of 1938, Chapter 345), authorizes cities to exercise the power of eminent domain to acquire property for housing projects.

Home FinancingLaws Favorable

No tax on savings and loan associations or their shareholders.
 Foreclosure by advertisement.
 No redemption period (except 3 years after foreclosure by entry).
 No moratorium law.
 Short foreclosure period (about 2 months).
 All real property taxes collected by one collector.
 Foreclosure inexpensive.
 Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

No laws studied appear to be unsatisfactory.

Building Regulations

There is no state building or plumbing code. There are miscellaneous laws regulating fire escapes and certain features of building construction. There is a law requiring licensing of professional engineers and land surveyors. The State Fire Marshal is required to enforce the laws relating to fires, including regulation of fire escapes and other exits. There is a law requiring the registration of architects. Eighteen municipalities of 2500 population and over are reported to have local building codes.

RHODE ISLAND (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1926, Ch. 804, authorizes creation of planning commissions in any city or town.

Platting: No law.

Zoning: Laws of 1921, Ch. 2069, as amended by Laws of 1923, Ch. 2315; Laws of 1925, Ch. 643; and Laws of 1931, Ch. 1762; enables cities and towns to zone. (Follows Standard Act.)
(For additional special Acts applying to certain towns and cities, see NRPB Circular XII.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Acts of 1934, No. 783, as amended by Acts of 1935, Nos. 301 and 345, as further amended by Acts of 1937, Nos. 183 and 284, and as further amended by Acts of 1938, Nos. 905 and 956 (1938 Supplement to Code of Laws of 1932, Section 9151), and by Acts of 1939, No. 638, provides for the organization of housing authorities for cities and towns, having a population of more than 5,000 and counties. The area of operation of an authority consists of the city, town or county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of housing authorities are exempt from taxation. Aiken County Housing Law, Acts of 1935, No. 301, authorizes the creation of housing authorities in Aiken County with all the functions, powers, rights and liabilities provided in the Housing Authorities Law. Housing Cooperation Law, Acts of 1939, H.B. 364, authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Legal Investments Law, Acts of 1939, H.B. 424, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Slum Clearance Law, Acts of 1939, H.B. 387, authorizes cities and towns having a population of more than five thousand to adopt ordinances providing for the repair, closing or demolition of dwellings unfit for human habitation. The property and bonds of housing authorities of the State are legal investments for public and private funds. State Housing Law, Acts of 1933, No. 143 (1934 Supplement to Code of Laws of 1932, Section 9150) creates a State Board of Housing. Validating Law, Acts of 1937, No. 647, validated the creation of housing authorities. Validating Law, Acts of 1939, No. 172, validated the organization of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities. Charleston Housing Authority 1939 Tax Law, Acts of 1939, No. 385, authorizes the county treasurer to accept taxes on certain property from the Charleston Housing Authority. Charleston Housing Authority Law Authorizing Disposition of Certain Personal Property, Acts of 1939, No. 626, provides for the disposition of certain materials existing on land acquired by the Charleston Housing Authority by eminent domain.

In *McNulty v. Owen*, 188 S.C. 377, 199 S.E. 425 (1938), the Supreme Court of South Carolina sustained the constitutionality of the Housing Authorities Law.

Housing authorities have been organized for Charleston, Columbia, Greenville and Spartanburg.

Limited Dividend Housing

State Housing Law, Acts of South Carolina 1933, No. 143 (1934 Supplement to Code of Laws of 1932, Section 9150), authorizes limited dividend housing companies to provide housing for families of low income and to provide for the elimination of congested and insanitary housing conditions under the supervision and regulation of the State Board of Housing. Such companies have the power to acquire property by eminent domain only with the authorization of the Board.

SOUTH CAROLINA (Cont'd)

Home Financing

Laws Favorable

No tax on savings and loan associations except income tax on shareholders.
Short foreclosure period (about 3 months).
No redemption period.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
Moratorium laws.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There are state building regulations for cities over 5,000 population. Cities whose population exceed 60,000 are empowered to enact building regulations. The Building Council of South Carolina is required to promulgate and recommend a State Building Code for adoption. There are laws requiring the registration of general contractors, architects, engineers, and land surveyors. Cities and towns are required to establish plumbing regulations. Twenty-six municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1939, Gov. No. 509, enables city of North Augusta to plan under direction of a plan commission. Session Laws of 1933, Ch. 195, p. 255, authorizes city councils of cities in counties containing a city whose population exceeds 60,000 to enact ordinances regulating erection of buildings in such cities.

Platting: Laws of 1928, Ch. 668 (1932 Code, Sec. 7389), requires maps and plats of subdivisions of land near large cities to be approved by city engineers.

Zoning: Laws of 1924, Ch. 642, as amended (Code, V. 3, Sec. 7390, Code Supp. of 1934, Sec. 7581-1), enables cities and incorporated villages to zone. (Follows Standard Act.)
Laws of 1920, Ch. 866, as amended by Laws of 1921, Ch. 417, authorizes zoning in Spartanburg.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home FinancingLaws Favorable

Short period of foreclosure (about 1 to 2½ months).
State, county and local taxes, expect special assessments, collected by one collector.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure by court action usual. Although the power of sale is permitted in this state, mortgagor may require foreclosure by action.
Redemption period (one year which may be extended for two years by payment of taxes and interest).
Moratorium laws and laws limiting deficiency judgments.
The inclusion of certain provisions in a mortgage prevents such instrument being placed of record.
High taxes on savings and loan associations.
Increased cost to lender of maintaining tax records due to fact that special assessments are collected by a separate official.

Building Regulations

There is no state building or plumbing code. There are building regulations applying to specified occupancies. Cities and towns are empowered to enact building regulations. Registration is required for the practice of professional engineering, land surveying, and architecture. The State Fire Marshal is empowered to make certain inspections of buildings and to order dangerous conditions abated. Eleven municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: No law.

Platting: Laws of 1931, Ch. 191, amends Sec. 6542, Code of 1919, in regard to conditions precedent to recording of plats. This law prevents recording of plats subject to special assessment liens.

Laws of 1931, Ch. 192, amends Sec. 5814, Code of 1919, requiring that tracts or lots divided for the purpose of transfer be platted, and the plat recorded.

Zoning: Laws of 1927, Ch. 176, as amended by Laws of 1927, Special Session, Ch. 18 (1927 Comp. Laws, Sec. 6523Z19), enables all municipal corporations to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Public Acts of 1935, Extra Session, Chapter 20, as amended by Public Acts of 1937, Chapter 234 (Michie's Tennessee Code of 1938, Sections 4406 (82) to 4406 (110B)), and as further amended by Public Acts of 1939, Chapter 74, provides for the creation of housing authorities for cities and towns having a population of more than 2,000. The area of operation of an authority consists of the city or town and the area within ten miles. An authority has the power to issue bonds and to acquire property by eminent domain. Memphis Housing Authority Law, Private Acts of 1935, Chapter 615, as amended by Private Acts of 1937, Chapter 900, and as further amended by Private Acts of 1939, Chapter 235, provides for the creation of a housing authority for the City of Memphis. The area of operation of the Memphis Housing Authority has the power to issue bonds and to acquire property by eminent domain. Housing Cooperation Law, Public Acts of 1935, Extra Session, Chapter 45, as amended by Public Acts of 1937, Chapter 225 (Michie's Tennessee Code of 1938, Sections 4406 (115) to 4406 (121c)), and as further amended by Public Acts of 1939, Chapter 154, authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects. Slum Clearance Law, Public Acts of 1939, Chapter 152, authorizes cities and towns, having a population of more than 2,000 to adopt ordinances to provide for the repair, closing or demolition of dwellings unfit for human habitation. Legal Investments Law, Public Acts of 1939, Chapter 155, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Tax Exemption Law, Public Acts of 1937, Chapter 214 (Michie's Tennessee Code of 1938, Section 4406 (121d)), provides that the property and bonds of housing authorities are exempt from taxation. Eminent Domain Law, Public Acts of 1935, Extra Session, Chapter 44 (Michie's Tennessee Code of 1938, Sections 4406 (111) to 4406 (114)), authorizes any federal agency or any corporation receiving financial aid from the United States or any agency thereof to acquire real property by eminent domain for a housing project. Eminent Domain Law, Public Acts of 1937, Chapter 183 (Michie's Tennessee Code of 1938, Section 3130), provides for the proceedings to be observed in the exercise of the power of eminent domain. General Validating Law, Public Acts of 1939, Chapter 59, validated the creation of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities. Memphis Validating Law, Private Acts of 1939, Chapter 214, validated the creation of the Memphis Housing Authority and all agreements, obligations, undertakings and proceedings of the authority. New General Validating Law, Public Acts of 1939, Chapter 230, validated the creation of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

In *Knoxville Housing Authority, Inc. v. City of Knoxville et al.*, 123 S.W. (2d) 1085 (1935), the Supreme Court of Tennessee sustained the constitutionality of the Housing Authorities Law.

Housing authorities have been created for Chattanooga, Johnson City, Kingsport, Knoxville, Memphis and Nashville.

TENNESSEE (Cont'd)

Home Financing

Laws Favorable

Tax imposed on savings and loan associations is slight.
Foreclosure by advertisement.
Short period of foreclosure (about 30 days).
Redemption period may be waived.
No moratorium law.
In general, state, county and local taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Redemption period (2 years unless specifically waived).
Increased cost to lender of maintaining tax records due to fact that certain municipalities collect local taxes independent of state and county taxes.

Building Regulations

There is no state building code. There are miscellaneous building laws regulating specified occupancies. There is no state plumbing code, but there is a special act regulating plumbing in counties having a population of not less than 165,000 nor more than 190,000 inhabitants. There are laws regulating fire escapes and requiring the registration of architects, engineers, and general contractors; and the licensing of plumbers. Twenty-seven municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Public Acts 1939, Ch. 158, authorizes State Planning Commission to create "Community Planning Commissions" for unincorporated communities with a population of not less than 500 inhabitants and covering an area of not more than 10 square miles.
Laws of 1935, Ch. 707 and 625, amending Private Acts of 1931, Ch. 613, providing for planning and zoning of Memphis and five miles outside corporate limits; also providing for planning and zoning of Shelby County.
Public Laws 1935, Ch. 34, creates planning commissions in all municipalities. (Follows Standard Act.)

Platting: Public Laws 1935, Ch. 45 and 35, regulate plats and subdivisions through planning commissions.

Zoning: Public Laws 1935, Ch. 44, enables any municipality to zone. (Follows Standard Act.) For additional acts applying to certain cities and counties, see NRPB Circular XII.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, Chapter 462, as amended by Laws of 1937, Second Called Session, H.B. 102 (Harlow's Texas Session Laws of 1937, Title 32, Chapter 2), provides for the organization of housing authorities for cities. The area of operation of an authority consists of the city and the area within five miles. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The bonds of housing authorities in the State are legal investments for public and private funds. Housing Cooperation Law, Laws of 1937, Chapter 461, as amended by Laws of 1937, Second Called Session, H.B. 103 (Harlow's Texas Session Laws of 1937, Title 32, Chapter 1), authorizes any state public body to cooperate with an authority for the Federal Government with regard to housing projects. Legal Investments Law, Laws of 1939, H.B. 834, provides that the bonds of any housing authority or agency in the United States are legal investments for public and private funds. Validating Law, Laws of 1939, H.B. 832, validated the organization of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

Housing authorities have been organized for Alice, Austin, Big Spring, Brownsville, Corpus Christi, Dallas, El Paso, Fort Worth, Harlingen, Houston, Laredo, McAllen, Marshall, Pelly, San Antonio, Temple and Waco.

Limited Dividend Housing

State Housing Law, Laws of 1933, Chapter 223 (Vernon's Texas Statutes, 1936, Article 1528a), authorizes limited dividend housing corporations to provide safe and sanitary housing for persons of low income under the regulation and supervision of the State Housing Board. The Texas Rehabilitation and Relief Commission is designated as the State Housing Board. For an earlier statute regarding housing corporations, see Laws of 1932, Chapter 42 (Vernon's Texas Statutes 1936, Articles 1524b to 1524k).

Home Financing

Laws Favorable

Foreclosure by advertisement.
Short period of foreclosure
(about 40 to 60 days).
No redemption period.
Foreclosure inexpensive.
Homesteads exempt from state
taxation up to \$3,000.
Laws permitting mortgage loans
up to 90% of appraised value
when insured by Federal Housing
Administrator.

Laws Unfavorable

Laws limiting deficiency judgments.
Unduly severe homestead and usury
laws.
Relatively high taxes on savings
and loan associations or shareholders.
Increased cost to lender of maintaining
tax records due to fact
that taxes are collected by more
than one official.

Building Regulations

There is no state building code but a committee has been organized to prepare one. There are laws requiring registration of architects and professional engineers. There are laws regulating certain features of building construction, including fire escapes and elevators. Municipalities are empowered to adopt building ordinances regulating building construction and plumbing. The State Fire Marshal is required to make certain inspections of buildings. Cities are required to license plumbers. Ninety-four municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: Laws of 1927, Ch. 276, Vernon's Texas Stats., 1936, Art. 1105a, p. 270, authorizes establishment of building lines in cities of 15,000 or more.

Platting: Laws of 1931, Ch. 217, Vernon's Texas Stats., 1936, Art. 6626, p. 1205, amends Art. 6626, R.S. 1925, so as to provide the prerequisites for filing and recording maps and plats of subdivisions; requires maps and plats to be authorized by any county court or by governing bodies of cities and towns. Laws of 1931, Ch. 160, Vernon's Texas Stats., 1936, Penal Code, Art. 1137h, p. 1775, regulates the filing and recording of maps and subdivisions.

Laws of 1927, Ch. 231, Vernon's Texas Stats., 1936, Art. 974a, grants authority to cities of 25,000 or more to control platting of surrounding territory (5 miles) by city planning commission or by governing body of city. (No enabling Act for the creation of Planning Commission.)

Zoning: Laws of 1927, Ch. 283 (1928 Code, Ch. 4, Art. 1011a), enables cities and incorporated villages to zone. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home FinancingLaws Favorable

Taxes on savings and loan associations negligible.
 Short period of foreclosure (about 30 to 60 days)
 State, county and local taxes, except special assessments, collected by one collector.
 Foreclosure relatively inexpensive.
 Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.
 No moratorium law.

Laws Unfavorable

Foreclosure is by court action only.
 Redemption period (6 months).
 During the redemption period borrower is entitled to possession and it is difficult to obtain a receiver.
 Increased cost to lender of maintaining tax records due to fact that special assessments are collected by a separate official.

Building Regulations

There is no state building or plumbing code. There are laws requiring the licensing of architects, contractors, engineers, and surveyors. Cities are empowered to enact ordinances regulating building construction, plumbing, installation of electrical wiring and related work, where such regulations have been printed as a code in book form, by reference. Sixteen municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: No Law.

Platting: 1923 Code Sec. 15-6-27, 78-5-1, regulates recording of plats and subdivisions.

Zoning: Laws of 1925, Ch. 119 (1933 Code, Ch. 15, Art. 8, Sec. 89), confers zoning authority upon cities. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1937, No. 231, as amended by Public Acts of 1939, No. 237, provides for the organization of housing authorities for cities and towns having a population of more than 10,000. The area of operation of a city authority consists of the city and the area within six miles; and the area of operation of a town authority consists of the town for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. Any state public body is authorized to cooperate with an authority or the Federal Government with regard to housing projects. Slum Clearance Law, Public Acts of 1939, No. 238, authorizes cities having a population of more than 10,000 to adopt ordinances providing for the repair, closing or demolition of dwellings unfit for human habitation. Validating Law, Public Acts of 1939, No. 236, validated the organization of housing authorities and all agreements, obligations, undertakings and proceedings of such authorities.

A housing authority has been organized for Burlington.

Home Financing

Laws Favorable

Taxes on savings and loan associations negligible.
Short period of foreclosure (about 3 to 4 months).
State, county and local taxes collected by one collector.
Provision for notice to mortgagees and other lienors of tax delinquencies prior to sale.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure is by court action only.
Redemption period (one year but may be varied by court).
Mortgage moratorium laws.

Building Regulations

There is no state building code. The State Fire Marshal is authorized to make regulations relating to fire escapes and to make certain inspections of buildings. Five municipalities of 5,000 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

VERMONT (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1929, Ch. 168, confers such city planning and zoning authority as is not in conflict with General Laws upon the Village of Bristol.

Laws of 1921, Ch. 107, as amended by Laws of 1933, No. 157, authorizes planning commissions in cities, towns, and incorporated villages.

Platting: No law.

Zoning: Laws 1939, H.B. 130, approved April 1, amends Sec. 3723, 3727, 3729, and 3720 of Public Laws, relating to municipal zoning. Laws 1939, S.B. 47, approved April 3, amends Sec. 3725 of Public Laws, relating to municipal zoning.

Laws of 1931, Act 55, as amended by Laws of 1933, Act 157 (Code of 1933, Sec. 3723), enables cities, towns and villages to zone.

Laws of 1929, Act 168, enables village of Bristol to zone.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1938, Chapter 310 (1938 Supplement to Code of 1936, Sections 3145 (1) to 3145 (24)), provides for the organization of housing authorities in cities and counties. The area of operation of an authority consists of the city or county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. Any city, town or county is authorized to cooperate with an authority for such city, town or county or the Federal Government with regard to housing projects. An authority is a political subdivision of the State and therefore pursuant to Section 183 of the State Constitution, the property of an authority is exempt from taxation.

Housing authorities have been organized in Bristol, Newport News and Portsmouth.

Limited Dividend Housing

State Housing Law, Laws of 1933, Extra Session, Chapter 55, authorizes limited dividend housing companies to provide housing for families of low income and to eliminate congested and insanitary housing conditions under the supervision, regulation and control of the State Board of Housing. Such companies have the power to acquire property by eminent domain only with the authorization of the Board.

Home FinancingLaws Favorable

Tax imposed on savings and loan associations is slight.
Foreclosure by advertisement.
Short foreclosure period (about 2 to 6 weeks).
No redemption period
No moratorium law.
All real property taxes collected by one collector.
Foreclosure inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

No laws studied appear to be unsatisfactory.

Building Regulations

There is no state building code. The State Board of Education has established minimum requirements for school buildings. There is a state plumbing code. There are laws requiring the registration of engineers, architects, and surveyors, and regulating fire escapes. Cities and towns are authorized to regulate building construction. There are laws regulating fire escapes and exits. Twenty-nine municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

VIRGINIA (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1936, Ch. 427, authorizes all counties to create planning commissions and adopt plans.

For additional laws pertaining to certain cities, see NRPB Circular XII.

Platting: Acts of 1930, Ch. 269, (see also Acts of 1932, Ch. 321)--
An Act relative to platting. Provides for recordation of plats located in or within not more than two miles of any incorporated town; for vacation thereof; for construction of public improvements therein, and for rights of such incorporated towns in connection therewith.

Zoning: Laws of 1938, S.B. 120, approved March 4, 1938, regulates the size, frontage, depth, and area of lots upon which buildings for human habitation may be constructed.

Laws of 1938, H.B. 189, approved April 1, 1938, enables all counties to enact zoning ordinances.

Laws of 1926, Ch. 197, as amended by Laws of 1930, Ch. 205 (Code Ch. 122A, Sec. 3091 (1)), enables cities and towns to zone.

Laws of 1927, Ex. Session, Ch. 15, as amended by Laws of 1930, Ch. 317, Laws of 1932, Ch. 190, Laws of 1936, H.B. 504, and Laws of 1938, H.B. 409 approved March 18, enables communities having a population of 500 to square mile to zone; (Applies to Arlington, Chesterfield, Henrico and Norfolk Counties.) For additional laws applying to certain cities and counties see NRPB Circular XII.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1939, Chapter 23, provides for the organization of housing authorities in cities and counties. The area of operation of a city authority consists of the city and the area within five miles; and the area of operation of a county authority consists of the county for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The bonds of any housing authority or agency in the United States are legal investments for public and private funds. Housing Cooperation Law, Laws of 1939, Chapter 24, authorizes any state public body to cooperate with an authority or the Federal Government with regard to housing projects.

Housing authorities have been organized for Elma, Everett and Seattle.

Home FinancingLaws FavorableLaws Unfavorable

Tax imposed on savings and loan associations is slight.

Short foreclosure period (about 3 months).

No moratorium law.

State, county and local taxes, except special assessments, collected by one collector.

Foreclosure relatively inexpensive.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Foreclosure is by court action only.

Redemption period (one year).

During the redemption period borrower is entitled to possession and it is difficult to obtain a receiver.

Increased cost to lender of maintaining tax records due to fact that special assessments are collected by separate official.

Building Regulations

There is no state building or plumbing code. There are laws regulating exits in hotels, regulating electrical work and requiring a license for the installation of electrical work. Architects, engineers, and land surveyors are required to be registered and electricians to be licensed. The State Fire Marshal is given authority over hazardous conditions in buildings. Cities are authorized to establish regulations relative to building where such regulations have been printed as a code in book form, by reference. Thirty-two municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

WASHINGTON (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1935, Ch. 44 (Remington Rev. Stats. Sec. 9322-1, Supp.), authorizes creation of city, county and regional planning commissions.

Platting: 1929 Pierces Code, Sec. 1172-1199, 6334-37, regulate the recording of plats of subdivisions.
Laws 1937, Ch. 186, regulates the platting and subdivision of lands.

Zoning: Laws of 1935, Ch. 44, provides for zoning in any city, town or county.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Acts of 1933, Second Extraordinary Session, Chapter 93 (Code of 1937, Sections 1409 (56) to 1409 (71)), provides for the creation of housing authorities for cities. The area of operation of an authority consists of the city for which it is created. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The city for which an authority is created is authorized to cooperate with such an authority with regard to housing projects.

In Chapman v. Huntington Housing Authority et al., 3 S.E. (2d) 502 (W. Va., 1939), the Supreme Court of West Virginia sustained the constitutionality of the Housing Authorities Law.

Housing authorities have been created for Charleston, Fairmont, Huntington, Keyser, Martinsburg, Morgantown, Mount Hope, Parkersburg, Wheeling and Williamson.

Home FinancingLaws FavorableLaws Unfavorable

Foreclosure by advertisement.
Short foreclosure period
(about 6 weeks).
No redemption period.
No moratorium law.
All real property taxes collected by one collector.
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Relatively high taxes on savings and loan associations or shareholders.

Building Regulations

There is no state building code. Registration of architects and engineers is required. Cities are authorized to regulate building construction. The State Fire Marshal is required to inspect certain buildings annually and to enforce laws regulating fire escapes. Twenty-one municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

WEST VIRGINIA (Cont'd)

Planning, Platting and Zoning

Local Planning: Code of 1937, Ch. 8, Art. 5, Sec. 521, authorizes creation of municipal planning commissions; defines powers and duties.

Platting: Code of 1937, Ch. 39, Art. 1, Sec. 3962, regulates recording of plats and subdivisions; requires approval by legislative bodies of cities or counties prior to laying out.

Zoning: Code of 1937, Ch. 8, Art. 5, Sec. 511 (1), enables all municipal corporations to zone. (Follows Standard Act.)

Laws of 1927, Ch. 5, Sec. 38 (a), amends charter of Wheeling to permit zoning. (Follows Standard Act.)

Laws of 1927, S.B. 261, amends charter of Charlestown to permit zoning. (Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Laws of 1935, Chapter 525, as amended by Laws of 1937, Special Session, Chapter 15 (Statutes of 1937, Section 66.40), provides for the creation of housing authorities for cities. The area of operation of an authority consists of the city and the area within five miles. An authority has the power to issue bonds and to acquire property by eminent domain. The bonds and property of housing authorities are exempt from taxation. Any state public body is authorized to cooperate with an authority or the Federal Government with regard to housing projects.

Housing authorities have been created for Madison and Superior.

Home Financing

Laws Favorable

No tax on savings and loan associations except income tax on shareholders.
Foreclosure by advertisement.
Short foreclosure period under power of sale (about 7 weeks).
Foreclosure relatively inexpensive.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

Foreclosure by court action usual, and extended period is required (16 to 19 months--sale being had after the expiration of the redemption period). Foreclosure by power of sale through possible as a practical matter, rarely used.
Redemption period (one year following foreclosure by power of sale).
Moratorium laws and laws limiting deficiency judgments.
Increased cost to lender of maintaining tax records due to fact that taxes are collected by more than one official.

Building Regulations

There is a state building code, a plumbing code, and an electrical code. There are laws requiring the registration of architects and engineers and the licensing of painters and plumbing. Municipalities are authorized to establish building regulations. The State Industrial Commission is required to administer certain laws relating to buildings, including fire escapes and means of egress. The board of health of any third-class city may establish a housing code. Forty-eight municipalities of 2,500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

WISCONSIN (Cont'd)

Planning, Platting and Zoning

Local Planning: Laws of 1937, Ch. 402, clarifies law relating to municipal planning (Stats. Sec. 62.23).

Laws of 1929, Ch. 178, amends Sec. 61.35 of Statutes, relating to village planning.

Laws of 1929, Ch. 279, relates to zoning by county boards; amends Subs. (1) and (2) of Sec. 59.97 of Statutes (Subs. (2) authorizes rural planning board, if any, to recommend boundaries of zones.)

Laws of 1927, Ch. 369, amends Sec. 61.35 of Statutes, relating to village planning; makes provisions of Sec. 62.23 apply to villages. Stats. Sec. 97.17 and 27.02-06 authorizes creation of county park or planning commissions.

Platting: Laws of 1935, Ch. 186, Stats. Ch. 236, as amended by Laws of 1939, Ch. 125, repeals and re-enacts Ch. 236 of Statutes, revising and consolidating the provisions of said chapter relating to the platting of lands and recording and vacating of plats.

Zoning: Stats. Sec. 59.97, authorizes zoning in all counties. Stats. Sec. 62.23, authorizes zoning in all cities.

Public Low-Rent Housing and Slum Clearance

No legislation now provides for the undertaking of low-rent housing and slum clearance projects by public housing agencies.

Home Financing

Laws Favorable

Taxes on savings and loan associations negligible.
All real property taxes collected by one collector.
Foreclosure by advertisement.
No moratorium law.
Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

An extended foreclosure period is required (about 44 to 48 weeks) and it is relatively expensive.
Redemption period (9 months).

Building Regulations

There is no state building or plumbing code. There is a law requiring fire escapes on specified occupancies. There is a law requiring the registration of engineers and surveyors. Municipalities are authorized to establish building regulations. Eight municipalities of 2500 population and over are reported to have local building codes. Others have fire limit ordinances and miscellaneous regulations concerning construction.

Planning, Platting and Zoning

Local Planning: No law.

Platting: 1920 C.S. Ch. 137, Sec. 2135-2149, regulates platting.

Zoning: Laws of 1923, Ch. 78 (1931 Code, Ch. 22, Art. 10) enables incorporated cities, towns and villages to zone.
(Follows Standard Act.)

Public Low-Rent Housing and Slum Clearance

Housing Authority Law, Session Laws of 1935, Act 190 (Series D-168), amended by Session Laws of 1937, Act 3 (Series D-169) and Act 179 (Series D-168), and as further amended by Session Laws of 1939, Act 91, created the Hawaii Housing Authority. The area of operation of the authority consists of the Territory of Hawaii. The authority has the power to issue bonds (with the approval of the Governor) and to acquire property by eminent domain. The property and bonds of the authority are exempt from taxation. The bonds of the authority are legal investments for public and private funds. Housing Cooperation Law, Session Laws of 1935, Act 173 (Series B-51), as amended by Session Laws of 1939. Act 90, authorizes the Territory of Hawaii and its political subdivisions and agencies to cooperate with the authority and the Federal Government with regard to housing projects. Eminent Domain Law, Session Laws of 1935, Act 118 (Series B-49), authorizes any federal agency or any corporation receiving aid from the United States or any agency thereof to acquire real property by eminent domain for a housing project. Validating Law, Session Laws of 1939, Act 79, validated the organization of the Hawaii Housing Authority and all agreements, obligations, undertakings and proceedings of the authority. Enabling Act of Congress, 50 Stat. 508, authorized the Legislature of the Territory of Hawaii to create a housing authority and ratified the acts of the Hawaii Legislature with regard to such authority.

The Hawaii Housing Authority has been organized for the Territory of Hawaii.

Home FinancingLaws FavorableLaws Unfavorable

Foreclosure by power of sale.
Short foreclosure period
(about 40 days by advertisement and 50 to 60 days by action).

No laws studied appear to be unsatisfactory.

There are no moratorium laws and ordinarily there is no redemption period.

Real property taxes collected by one collector.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Building Regulations

There is a building code in Honolulu.

Planning, Platting and Zoning

Information not available.

Public Low-Rent Housing and Slum Clearance

Housing Authorities Law, Acts of 1938, No. 126, as amended by Acts of 1939, No. 156, creates the Puerto Rico Housing Authority and provides for the organization of housing authorities for municipalities. The area of operation of the Puerto Rico Housing Authority consists of Puerto Rico; and the area of operation of a municipal authority consists of the municipality for which it is organized. An authority has the power to issue bonds and to acquire property by eminent domain. The property and bonds of an authority are exempt from taxation. The bonds of an authority are legal investments for public and private funds. Housing Cooperation Law, Acts of 1938, No. 125, authorizes the Government of Puerto Rico and any agency or instrumentality thereof or any municipality to cooperate with an authority or the Federal Government with regard to housing projects. Slum Clearance Law, Acts of 1938, No. 222, authorizes municipalities to adopt ordinances providing for the repair, closing and demolition of dwellings unfit for human habitation. Street Repair and Maintenance Law, Acts of 1939, No. 24, authorizes assistance to housing authorities by providing for the repair and maintenance of streets within housing projects by the Commissioner of the Interior without cost to authorities. Enabling Act of Congress, 52 Stat. 1203, authorized the Legislature of Puerto Rico to create housing authorities and ratified the acts of the Puerto Rico Legislature with regard to such authorities.

Housing authorities have been organized for Puerto Rico and the municipalities of Arecibo, Mayaguez, Ponce and San Juan.

Home Financing

Laws Favorable

There is a short summary form of action under which a copy of the mortgage and a registrar's certificate showing it to be in force are filed in court, whereupon a judicial order is issued and served on the debtor giving him a period of 30 days to make payment. If he fails to do so, the court orders the property sold at public auction without right of redemption.

There are no moratorium laws.

Real property taxes collected by one collector.

Laws permitting mortgage loans up to 90% of appraised value when insured by Federal Housing Administrator.

Laws Unfavorable

No laws studied appear to be unsatisfactory.

Building Regulations

Information not available.

Planning, Platting and Zoning

Information not available.

Public Low-Rent Housing and Slum Clearance

United States Housing Act of 1937, 50 Stat. 888, as amended by 52 Stat. 820, created the United States Housing Authority. The Act provides for financial aid to local public housing agencies to assist them in the construction and administration of low-rent housing and slum-clearance projects. Executive Order No. 7732 of October 27, 1937 transferred 51 P.W.A. Housing Division Projects in 20 States, the District of Columbia, Puerto Rico and the Virgin Islands and the securities acquired by the P.W.A. for 7 limited dividend housing projects to the U.S.H.A. By Executive Order No. 7839 of March 12, 1938 the 2 Puerto Rico projects originally transferred to the U.S.H.A. were turned over to the Puerto Rico Reconstruction Administration. With regard to P.W.A. Housing Division Projects, see also the following statutes: National Industrial Recovery Act of 1933, 48 Stat. 195, at 200; Emergency Relief Appropriation Act of 1935, 49 Stat. 115; First Deficiency Appropriation Act of 1936, 49 Stat. 1597; and the George-Healey Act of 1936, 49 Stat. 2025.

256 local public housing agencies have been organized in 37 States, the District of Columbia, Hawaii and Puerto Rico. 126 of these local agencies have entered into 176 loan and annual contributions contracts with the U.S.H.A. for financial assistance in the construction and administration of 267 low-rent housing and slum-clearance projects. Loan contracts with the U.S.H.A. total \$472,745,000 as of August 15, 1939. The U.S.H.A. is authorized to enter into loan contracts totalling \$800,000,000. Contracts with the U.S.H.A. for federal annual contributions for low-rent housing projects total \$20,813,200 as of August 15, 1939. The U.S.H.A. is authorized to enter into federal annual contributions contracts totalling \$28,000,000.

Federal Laws Affecting Home Financing

Federal laws render substantial aid to home financing through the following agencies:

Federal Housing Administration: Insures home mortgages created by private financial institutions for amounts up to \$16,000 and up to 90% of the appraised value, for terms up to 25 years. Provides a sound method of home financing, obviates the necessity for second and third mortgages, promotes uniform mortgage lending and appraisal practices, and higher standards of construction. Insures mortgages financing large-scale housing projects for amounts up to \$10,000,000. Insures modernization loans for repairs, alterations and equipment.

Farm Credit Administration: Provides a cooperative credit system for agriculture, through which loans are available for purchase of farm land and buildings, refinancing of farm mortgages, construction or improvement of farm houses, and other agricultural purposes.

Federal Home Loan Bank System: Serves as a permanent credit reserve system through which private member home-financing institutions may obtain short or long term loans as needed, the latter secured by approved home-mortgage collateral.

Federal Laws Affecting Home Financing

Savings and Loan Division: Charters and supervises privately managed local mutual thrift and home-financing institutions known as Federal Savings and Loan Associations, and assists in establishing sound mortgage lending practices favorable to home ownership.

Federal Savings and Loan Insurance Corporation: Insures against loss up to \$5,000 the accounts of individual investors in all Federal Savings and Loan Associations and acceptable State chartered institutions of the building and loan type.

Home Owners' Loan Corporation: Relieved distress during the emergency by refinancing on a long-term basis at moderate interest the home mortgage indebtedness of individuals faced with the loss of their homes through foreclosure or tax sale.

Building Regulations

The Federal Government, through the National Bureau of Standards, has been engaged in the preparation of building code recommendations for over seventeen years. These incorporate the results of research carried on in the Bureau. This work is being continued under the procedure of the American Standards Association. Recommendations are available to states and municipalities for use in preparation or revision of their building codes.

Planning-Zoning

This field of law is outside the scope of Congress. No legislation of this type has been enacted except for the District of Columbia which is set forth under this classification.

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"The power of changing the relative situation of debtor and creditor, of interfering with contracts, . . . had been used to such an excess by the State Legislatures, as to break in upon the ordinary intercourse of society, and destroy all confidence between man and man. The mischief had become so great, so alarming, as not only to impair commercial intercourse, and threaten the existence of credit, but to sap the morals of the people, and destroy the sanctity of private faith. To guard against the continuance of the evil was an object of deep interest with all the truly wise, as well as virtuous, of this great community, and was one of the most important benefits expected from a reform of the government."

Chief Justice Marshall in Ogden v. Saunders,
12 Wheat. 213, 354-55 (U.S. 1827).

(See LEGAL COMMENT - "MORATORY LEGISLATION")

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

HOUSING LEGAL DIGEST

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The Editors of the HOUSING LEGAL DIGEST endeavor to present as completely and impartially as possible material relating to housing legal problems: but they assume no responsibility for opinions expressed herein and no inference may be drawn as to their agreement or disagreement with viewpoints expressed.

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DECISIONS

BANKRUPTCY

(C.C.A. 2 (Clark, C.J.); In re Miller, July 10, 1939. 7 U. S. Law Week 233.)

Claim of FHAdministrator in bankruptcy of borrower held not entitled to priority

The FHAdministrator, having acquired by assignment a note insured under the Modernization Credit Plan of the National Housing Administration subsequent to the bankruptcy of the borrower on reimbursement of a bank as the lending institution following the borrower's default in the payment of the note, is not entitled to priority in the payment of his claim on the theory that the claim is for a debt to the United States.

The decision of the Supreme Court of the United States in *United States v. Marxen* (6 LW 1309), is controlling, notwithstanding the contention of the Administrator that the facts in the instant case, unlike the facts disclosed in the *Marxen* case, shows that, at the time the petition in bankruptcy was filed, the United States possessed a provable claim predicated upon an agreement by the borrower to indemnify the government for any loss it might sustain by reason of its insurance of the credit to the bank.

Relying on such facts, the Administrator contends that the *Marxen* case is not in point since it involved a claim based on assignment of the borrower's note to the Administrator subsequent to bankruptcy.

The claim involved in the instant case as described by the proof of claim was based on the bank's assignment of the note to the Administrator and not upon a previously existing obligation to indemnify the Administration. But, if such an obligation can be implied from the facts, the legal result would be the same. It has been held that an insurer must prove the creditor's claim, not his own. The "view that a person secondarily liable proves only in the right of the creditor, not upon an agreement, express or implied, of indemnity, seems to be generally supported by commentators".

The case of *Tennant v. United States Fidelity & Guaranty Co.*, 17 F. 2d 38, 39 (C.C.A. 3), "apparently contra in allowing proof of an express contract of indemnity, though the surety had already paid, is criticized as affording a possibility of double proof". It is in conflict with Section 57 (i) of the Bankruptcy Act which provides that "whenever a creditor whose claim against a bankrupt estate is secured by the individual undertaking of any person fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor". By such proof ample protection is accorded the surety without the danger of double proof to "which the Government's case here would seem directly to lead".

COVENANTS - PUBLIC POLICY

(*Thornhill et al v. Herdt et al.* St. Louis Court of Appeals, 130 S.W. 2d 175)

Covenants or agreements creating restrictions against the use or occupancy of property by members of a certain race, whether created by deed or by an agreement executed apart from an instrument of conveyance, are not in contravention of public policy but are valid and enforceable. Such covenants or agreements do not violate any constitutional prohibitions.

This is a suit for an injunction to restrain defendants, who are owners of certain property in the City of St. Louis, from violating a restrictive agreement prohibiting the sale, conveyance, leasing or rental of property in the restricted area to Negroes. The particular property in question is on a short residential street, in an unpretentious portion of the city, and in the neighborhood there have been Negroes for several years. In fact at the end of the street where this property is located there have been living for several years a few Negro families. It was in an endeavor to prevent the further influx of members of that race that certain of its white members of this particular street undertook the preparation and execution of the restrictive agreement upon which the present suit is based.

By such agreement each of the subscribing property owners undertook to create, establish and attach to his lands a restriction against the sale, conveyancing or leasing of the property to Negroes. They attempted to make this restriction binding upon their heirs, successors, or assigns. The restriction was to remain in effect for twenty years.

In putting this plan into effect, a form of agreement was prepared in which it was recited at the outset that the agreement was to be made and entered into by and between the subscribing owners of the land to be affected as the parties of the first part and the officers of the St. Louis Real Estate Exchange as parties of the second part and plaintiffs herein.

An attempt was made to get the instrument signed and acknowledged by the owners of the forty-six pieces of property described in the agreement which would be affected by the restriction, but it appears that seventeen property owners did not sign the agreement at all; that eighteen of the property owners signed defectively so as not to be bound by the restriction; while eleven property owners signed properly, including the person through whom defendants subsequently acquired title to the premises which they are now undertaking to rent to Negroes. The instrument was filed for record.

Although having been notified about a month previous to bringing this suit that the restrictions were being violated, defendants, nevertheless, proceeded to rent the property to Negroes.

Defendants, in their answer, set up that for want of proper and lawful execution of the restrictive agreements there was no valid and subsisting restriction which forbade the renting of their property to Negroes; that the neighborhood had so changed as to become a Negro neighborhood and that it would be unjust and inequitable to enforce the terms of the restrictive agreement with respect to defendants' property.

In holding for defendants the trial court held that the restrictive agreement was "according to its terms and conditions valid and binding as against the parties named therein who properly executed same, except as against the defendants Leonard Herdt and Johanna Herdt".

Although the defendants' grantor had duly signed and acknowledged the restrictive agreement, the trial court held that it would be unjust to require defendants' property to be restricted against occupancy by Negroes in view of the fact that the property was four feet from property which had been used exclusively for Negroes for fifteen years and that the entire neighborhood had become a Negro one. The appellate court in affirming the decision said:

"We are aware of the general judicial assent to the view that covenants or agreements creating restrictions against the use or occupancy of property by members of a certain race, whether created by deed or (as attempted here) by an agreement executed apart from an instrument

of conveyance, are not in contravention of public policy, and are valid and enforceable, being such covenants or agreements as the parties entering into them have the right to make. *Koehler v. Rowland*, 275 Mo. 573, 205 S.W. 217, 9 A.L.R. 107; *Porter v. Johnson*, Mo. App., 115 S.W. 2d 529; 14 Am. Jur., *Covenants, Conditions and Restrictions*, sec. 208; 114 A.L.R. 1237.

"Nor do such covenants or agreements violate any of the constitutional prohibitions designed to prevent racial discriminations, since such prohibitions, in so far as they might otherwise be thought to have relation to covenants or agreements creating racial restrictions upon the use or occupancy of property, apply only to actions by the state, and not to the actions or contracts of private individuals. *Corrigan v. Buckley*, 271 U.S. 323, 46 S. Ct. 521, 70 L.Ed. 969. . . .

"The primary consideration in the construction of a restrictive agreement--just as in the case of the construction of any other character of instrument--is to ascertain and give effect to the true intention of the contracting parties as the same may be gathered from the terms of the agreement itself when considered in the light of all the facts and circumstances attending its execution. *Pierce v. St. Louis Union Trust Co.*, 311 Mo. 262, 278 S.W. 398; *Gardner v. Maffitt*, 335 Mo. 959, 74 S.W. 2d 604, 95 A.L.R. 452; 14 Am. Jur., *Covenants, Conditions and Restrictions*, sec. 211. . . .

"In considering the essential elements and characteristics of a neighborhood scheme of restriction, there is no better discussion of the subject to be found than that contained in the case of *Scull v. Eilenberg*, 94 N.J.Eq. 759, 121 A. 788, 789, wherein the Court of Errors and Appeals of New Jersey had this to say: 'A neighborhood scheme of restrictions to be effective and enforceable must have certain characteristics. It must be universal; that is, the restrictions must apply to all lots of like character brought within the scheme. Unless it be universal it cannot be reciprocal. If it be not reciprocal, then it must as a neighborhood scheme fall, for the theory which sustains a scheme or plan of this character is that the restrictions are a benefit to all. The consideration to each lot owner for the imposition of the restriction upon his lot is that the same restrictions are imposed upon the lots of others similarly situated. If the restrictions upon all lots similarly located are not alike, or some lots are not subject to the restrictions while others are, then a burden would be carried by some owners without a corresponding benefit.'

"In the case at bar, where it would seem that only eleven of the forty-six pieces of property within the district could possibly be

held subject to the restriction, it is at once apparent that for want of reciprocal obligations on the part of all the property owners, the plan has in any event failed as a neighborhood scheme of restriction, and that if it were to be enforced against defendants as the present owners of but one of the pieces of property, great inconvenience and damage would unquestionably result to them, with but little or no corresponding benefit to such other property owners in the district as plaintiffs may perchance be representing.

"Here the parties not only indicated by the form of their agreement that it was the intention that the owners of all the pieces of property described therein should jointly constitute the parties of the first part, but indeed, when due regard is had for the result which was sought to be accomplished, anything short of that intention would have tended to defeat the very purpose of the restriction. Nothing contrariwise appearing, and with all the attendant circumstances pointing unmistakably in that direction, we must assume that the execution of the agreement was planned by its proponents with that intent which alone could have made the undertaking successful.

"This is not to say that those who did sign might not, had they been so minded, have set forth their own intention to be bound regardless of who might refuse to sign, nor, if they contemplated the impossibility of obtaining all the desired signatures, that they might not have agreed to be bound upon the contingency that a certain number, but less than the whole, of the property owners should sign. Such a plan, if its effectiveness had been conditioned upon obtaining a sufficiently large number of signatures, might not have been wholly unsuccessful, and in any event the prospect of putting it into execution would have been far more likely than in the case where the signatures of all the owners were required. The fact remains, however, that the parties made no such provision for giving force and effect to their agreement, and with it appearing that no subscribing property owner intended to be bound unless all other property owners were bound, we have no recourse but to hold that for want of finality or completeness of assent, the agreement never attained validity for the purpose of imposing a restriction upon any of the property within the district. *Pickel v. McCawley*, 329 Mo. 166, 44 S.W. 2d 857; *Oberwise v. Poulos*, 124 Cal.App. 247, 12 P. 2d 156; *Foster v. Stewart*, 134 Cal.App. 482, 25 P. 2d 497; 14 Am.Jur., *Covenants, Conditions and Restrictions*, sec. 197; 114 A.L.R. 1242.

"This, we think, is the true basis upon which plaintiffs must be denied their remedy by injunction, and not the ground relied upon by the lower court, which was that inasmuch as defendants' property immediately adjoins and abuts upon property which is now and for many years has been

occupied by Negroes, so that it has but little value outside of its adaptability for rental to members of that race, it would be inequitable and unjust to hold that such property is burdened by the restriction, even though valid as to the other property within the district. In every similar case there must always be some property which, by reason of its location on the very threshold of the restricted district, is forced to bear the brunt of the thing or condition against which the restriction is directed, but that this may be so will not serve to justify the abatement of the restriction upon such property, even though the same might be enhanced in monetary value to its owner if the restriction were removed. *Rombauer v. Compton Heights Christian Church*, 328 Mo. 1, 40 S.W. 2d 545."

EASEMENTS

(*Dyba et ux v. Borowitz*, Superior Court of Pennsylvania, 7 A. 2d 500)

A deed granting right of ingress, egress and regress to grantee through and over alley along line of lot adjoining that conveyed did not forbid owner of adjoining lot from erecting boundary fence on his own land unencumbered by right of way. The fact that there was no fence on lot along line of alley, over which owners of adjoining lots had right of way under deed to their predecessor in title; when such easement was created, and that none was erected for almost 18 years thereafter, are not sufficient to deprive servient owner of his inherent right to erect division fence on his lot with suitable access to way

Plaintiffs and defendant own adjoining lots in the City of Pittsburgh. They received their property from a common grantor on the same day. In the deed the grantor granted a right of way over defendant's property for the use of plaintiff. The above parties acquired their title in 1919 and from that time until June 26, 1936, there was no division fence between the properties so that plaintiffs had free access to pass over the alleyway of defendant's property in crossing to and fro. Plaintiffs allege that their rights to the alley have been infringed by the erection of a fence by defendant and asked the lower court for an injunction for the removal of the fence. This was granted and defendant brought this appeal, upon which the court reversed the trial court's decision.

The words in a grant are to be construed in their ordinary and natural sense. There was nothing in the grant that expressly or im-

pliedly forbade the erection of a boundary fence. The circumstances of the case do not show that the defendant has been deprived of any right of building on his own lot or of even building a boundary fence had he so desired. "A landowner has the inherent right to erect a boundary fence along the division line of his property, and, as owner of a fee of a servient tenement over which a right of way has been granted, he, unless he expressly agrees to the contrary, may make any use of his land which does not interfere substantially with the easement. Mr. Justice Elkin, in *Mercantile Library Co. v. Fidelity Trust Co.*, supra (235 Pa. page 15, 83A page 595), said: 'In this commonwealth the rule always has been that the owner of land, who grants a right of way over it, conveys nothing but the right of passage, and reserves all incidents of ownership not granted.' See, also, *Graham et ux v. Water Power Corp.* 315 Pa. 572, 574, 173 A. 311."

There was no proof of any interference with plaintiffs' right of ingress or egress "through and over" the alley. They had access at either end of it. The privilege of the deed gave them no right to enter or cross the alley at any point.

The court said: "While we have found no case, and none has been cited expressly deciding the question before us, the right to build a fence along a right of way is generally recognized in other jurisdictions. See *Guse v. Flohr et al.*, 195 Wis. 139, 217 N.W. 730; *Good v. Petticrew et al.*, 165 Va. 526, 183 S.E. 217; *Willing v. Booker*, 160 Va. 461, 168 S.E. 417. 'Unquestionably, the owner of a servient tenement may fence along the way or not, as his convenience may dictate.' 9 R.C. L. p. 801, section 56. 'The owner of a servient estate may erect fences along the sides of a way, but not across the way so as to obstruct it entirely.' 19 C.J. p. 986, section 240.

"It is true there was no fence when this easement was created and none was erected for a period of almost eighteen years thereafter, and those facts are worthy of consideration. But they are not sufficient to deprive the servient owner of his inherent right to use his property as he sees fit, including the erection of a division fence with suitable access to the easement. It must be borne in mind that all that was granted was a right of way 'through and over two and ninety-six one-hundredths ($2\frac{96}{100}$) feet wide'. The fundamental right to erect a fence upon the boundary line cannot be taken away from the owner of the fee by that language."

EMINENT DOMAIN

(Stoner et al v. Iowa State Highway Commission; ---Iowa---, 287 N.W. 269.)

The sanctity of the home and the right of every free man to occupy and enjoy the same unmolested is subject to the higher and greater right known as the public welfare. In a condemnation proceeding for strip of land for highway purposes, the Supreme Court will not interfere with a verdict where there is a serious dispute in the evidence regarding value and there is competent evidence upon which the verdict could have been reached.

This is a condemnation proceeding whereby the State Highway Commission acquired a strip of ground on each side of a highway which runs through the middle of plaintiffs' farm. The damages were fixed by the appraisers appointed by the Chief Justice of the Supreme Court, under statutory provision, and the damages set at \$358. The plaintiffs appealed; were granted a jury trial which awarded them a sum of \$2,500; and now the State Highway Commission appeals this latter verdict.

In describing the plaintiffs' farm and his home and the grounds upon which it is situated the court went into a lengthy description of it, describing in detail the beautiful shrubbery and old trees that had surrounded the home; the cedar trees and all the natural grandeur of the beautiful estate that had been taken away when this part of the highway was widened and the property condemned for that purpose. The majestic manner in which this property is described may well be read.

The court, however, in referring to the main contention of the appeal which was that the size of the verdict was excessive, said:

"Constitutional provisions, as well as legislative enactments and judicial decisions, have declared the policy which recognizes the sanctity of the home and the right of every free man to occupy and enjoy the same unmolested. This, of course, is subject, as are all other individual rights, to the higher and greater right known as the public welfare. When it is thought necessary, by the powers that be, to appropriate property by the power of eminent domain, the law givers have seen fit not to lodge the duty of fixing the damages in the hands of the court but in a jury of freeholders, and courts have recognized that, in this sort of a proceeding, the question of damages to be assessed for the land appropriated is peculiarly one for the jury.

"As stated by the distinguished jurist, the late Justice Evans,

in *Cory v. State*, 214 Iowa 222, 228, 242 N.W. 100, 103: 'The function of this court in such a case is not to review the evidence and determine therefrom the amount which we think would have been a proper award. In order to justify our interference with the verdict on the ground of its being excessive, we must find that the jury abused its functions upon the record. . . . It may be conceded that the verdict was liberal, and that it was more so than a court without a jury would have awarded. But this is not the criterion which determines the length of arm of the appellate court. The district court has more, rather than less, discretion than we, to interfere with the verdict of a jury. The verdict comes to us as the finding of the jury, which has been approved by the trial court. Proper grounds of interference on our part, with verdict as being excessive, have been considered and announced many times in our previous cases, and we need not repeat the discussion here. (Citing cases.) The market value of a farm is a matter of approximation at best. Its determination involves personal opinions and psychological factors which may not be measured with mathematical accuracy. Different persons, exercising their judgment honestly, may vary greatly in the respective results. Where competent and disinterested persons are brought together as a jury, and, in the light of all the facts as presented by the litigants, put their varying opinions and psychologies into the debate and finally agree upon a result, it must ordinarily be deemed as the best approximation available to human judgment.'

The court found that the damages awarded were not excessive. It went on to overrule other points that appellants made but it is not necessary to go into those here in digesting this case. The language used in writing this opinion is one well worth reading in its description of the sanctity of the home and length to which one may go in explaining the good points of his property in condemnation proceedings.

EMINENT DOMAIN

(*Pooler et al v. Village of Ilion*, Supreme Court, Appellate Division, Fourth Department, 13 N.Y.S. (2d) 926.)

A property owner, whose house was injured when land settled after a concrete retaining wall gave way after street improvements had been commenced, was not entitled to damages or an injunction restraining village from interfering with his property or the street, where the work done was wholly within the street limits and involved no negligence and was clearly within the village's rights

The plaintiffs are owners of a home and lot in the village of Ilion. There is a steep ascent from the roadway to the location of the

house. The village of Ilion widened this roadway and in doing so it lowered the grade of the road a few inches. Subsequently, the concrete retaining wall at the edge of the roadway and between the roadway and the sidewalk gave way, and the land settled and the plaintiffs' house was damaged. The plaintiffs sought damages and an injunction against the defendant to restrain it from interfering with the plaintiffs' property or the street in front of plaintiffs' premises.

The court held that the plaintiffs were not entitled to damages and said: "The plaintiffs are not entitled to damages for change of grade for, even if it is assumed that there was a change of grade, the only right to damages as a consequence thereof would be under section 159 of the Village Law, and that section requires service of notice of claim upon the board of trustees within sixty days after the change of grade is effected and no notice was given within the required period. Damages can not be awarded for failure on the part of the defendant to furnish lateral support to the plaintiffs' property for the reason that no obligation rests upon the defendant in that respect. Village of Haverstraw v. Eckerson, 192 N.Y. 54, 84 N.E. 578, 20 L.R.A.N.S., 287; Radcliff's Executors v. Mayor, etc., of Brooklyn, 4 N.Y. 195, 53 Am. Dec. 357; Moore v. City of Albany, 98 N.Y. 396. The work done by the defendant in the street improvement was wholly within the street limits, involved no negligence and was clearly within the defendant's rights. The stairway removed encroached upon the roadway. There is evidence that the street commissioners did not refuse to allow plaintiffs to construct an approach from the roadway to the sidewalk not encroaching upon the roadway itself under the supervision of the street department but that seems not to have been what plaintiffs desired."

EMINENT DOMAIN

(City of Atlanta v. West, Court of Appeals of Georgia, 3 S.E. 2d 755.)

A suit in which it was alleged that city appropriated certain land of plaintiff to the use of the public as a sidewalk, and asking recovery for value of land so taken, was not a "suit respecting title to land", within exclusive jurisdiction of the superior court, but was a suit to recover damages for trespass to plaintiff's land, the title of which was not in issue. An owner of land who dedicates a portion of his land to city for use as a public street could reserve a strip along one side of one street, and thereby cut off the public from access to the street from property adjoining such strip, and such reservation was not void as being repugnant to the

grant of the street.

S. J. West sued the City of Atlanta, alleging in his petition that he had been the owner in fee simple of a one foot strip of land fronting on the south side of an avenue and that defendant in laying a concrete sidewalk and granite curb along this street had so laid the sidewalk and curb as to cover the one-foot strip owned by plaintiff. He claimed that this constituted a confiscation of his property for public use without due process of law; that said real estate is of no value to him and claims damages of \$2500. Plaintiff had for seven years previous paid taxes on this piece of property in the valuation of \$1500.

The defendant denied many of the allegations and demurred to the petition on the ground that it was an action involving title to real estate, and that under the law only the superior court of Fulton County had jurisdiction. After having lost in the lower court, when the court, upon consent of the parties that a jury trial be waived, rendered a judgment in favor of plaintiff for \$1,250, and having lost its motion for a new trial the defendant brings this case to the Court of Appeals.

In regard to the question whether the suit was one respecting title to land and which could be brought only in the superior court the Court said:

"The petition alleges that the city appropriated the plaintiff's land by incorporating it in a public sidewalk, and refused to pay for the land thus taken. The suit is not one to recover possession of land, or for the purpose of settling a disputed title. It is a suit to recover damages for trespass to the plaintiff's land, the title to which is not in issue, but is conceded to be in the plaintiff. See *Batson v. Higginbotham*, 7 Ga. App. 835, 68 S.E. 455; *Roberts v. Mitchell*, 166 Ga. 229, 142 S.E. 882. The case of *Daniels v. Chambers*, 1 Ga. App. 607, 57 S.E. 1022, is distinguishable. The allegations in the petition in that case differ materially from those of the petition in the present case. In the former there was no prayer for judgment; and as far as the vague allegations show, it was an effort to establish the plaintiff's title as against another person who was in possession and getting the annual profits. In the present case the pleadings and the evidence do not show any claim of title by the city, but it is practically conceded that the strip in question belonged to the plaintiff when the city laid the sidewalk on it. The court did not err in overruling the demurrer. It was urged for the city that the allegation that the plaintiff would make a title to the city shows that the action was one respecting title to land. This does not change the nature of the action otherwise made, appearing in the petition. In *Mayor, etc., of Rome v. Perkins*, 30 Ga. 154, it appeared that the City of Rome appropriated a

man's land to a public street and suit was brought to recover of the city the value of the property thus taken. In the opinion the court said: 'The landholder, instead of enjoining the corporation from taking his property before just compensation was made, or suing in trespass, brings his action to recover its value. If he is content to take this course, we do not see that the public can object. We shall require the plaintiff to execute and file the necessary release, to avoid all future misunderstanding.'"

In regard to the contention of defendant that the judgment was excessive the court said: "It is contended by the defendant that the judgment is excessive, and that the damages should have been restricted to the value of the easement taken. In reply to this it may be said that the value of the property depended upon its peculiar location cutting off a few property owners from access to the street which the plaintiff's grantor had dedicated to the public and this value was entirely destroyed by so extending the sidewalk across the plaintiff's strip so as to reach the property abutting the strip on its east side. Under these circumstances it was proper to allow a recovery for the value of the strip. Mayor, etc. of Rome v. Perkins, supra. In City of Atlanta v. Glenn, 17 Ga. App. 619, 87 S.E. 910, it was said: 'The actual value of the property taken was the sole issue in the case.' In regard to the claim that the amount found by the judge was excessive, it is sufficient to say that the evidence authorized the finding. There was considerable testimony pro and con but it was shown that the city for years had assessed and taxed the strip as worth \$1,500, and that two owners of land abutting the strip on the east had paid \$5 per front foot for the right of ingress and egress over the strip . . .

"The contention that the person who gave the land for the street could not reserve a strip along one side of the street, and thus cut off the public from access to the street from property adjoining this strip, can not be sustained. It is not the law that the dedicator of a street must so extend the width of the street which he gave to the public as to accommodate landowners on the other side of the street and give them access to the street."

LIENS - FORECLOSURE - PRIORITY

(HOLC v. George E. McNabb, et al; Court of Appeals of Franklin County, Ohio. Case decided Sept. 15, 1939.)

In foreclosure suit in Ohio Clerk of Courts held not entitled to lien for unpaid costs in former foreclosure suit without having issued an execution for his own benefit on judgment

for costs in former suit.

A peculiar question arose in an HOLC foreclosure suit. In March, 1932, Real Estate Service, Inc., instituted suit in the Court of Common Pleas of Franklin County, Ohio, against the then owners, Rozell and Mary E. McNabb, to foreclose its first mortgage on the property involved. This suit was No. 133, 165 on the docket and it proceeded to a foreclosure judgment on August 4, 1932, in the sum of \$3,998.85, with interest from February 29, 1932, "and for the costs herein expended". On August 8, 1932, on precipe of plaintiff's attorney execution by way of order of sale was issued but was returned without satisfaction on November 21, 1932, by order of plaintiff's attorney. On January 18, 1933, an alias order of sale was issued on precipe of plaintiff's attorney but was returned without satisfaction on March 6, 1933, by order of plaintiff's attorney. No execution was ever issued by the Clerk of Courts, himself, and no execution of any sort was ever issued except as aforesaid. The case remained on the docket, never having been dismissed of record, and court costs amounting to \$70.42 remained unpaid.

In the meantime, and on June 15, 1932, Rozell and Mary E. McNabb had conveyed the property to George E. McNabb, who on December 15, 1933, obtained from HOLC a "redemption" or "recovery" loan, the proceeds of which went to Real Estate Service, Inc. George E. McNabb defaulted in his payments to HOLC and it instituted a foreclosure suit against him in the same court, making Real Estate Service, Inc., and of Arthur Yoder, Clerk of Courts, parties defendant along with McNabb. Real Estate Service, Inc., filed a disclaimer, but Yoder filed an answer and cross-petition seeking to have a first and prior lien declared in his favor on the property for the \$70.42 of unpaid court costs in this former suit, No. 133,165. He contended that only tax liens primed his alleged lien and that his alleged lien was prior to the lien of the HOLC mortgage.

When the case reached the Court of Appeals of Franklin County, Ohio, that Court affirmed the judgment of the Court of Common Pleas which, after stating that the Clerk had himself issued no execution on the former judgment for his own benefit and that Real Estate Service, Inc., had filed a disclaimer, held as follows: "Is there any lien for costs in favor of the Clerk? G. C. 3028 provides that when a successful party to an action fails to issue execution, or an execution is returned unsatisfied, the clerk may for his own benefit issue execution to compel the party to pay his own costs. It would seem to follow that since the judgment which included costs was in favor of plaintiff in the former case, only, and the Clerk was not a party to the case, that he acquired no lien, unless and until he caused an execution therefor to be issued. This is the effect of the Attorney General's opinion, No. 3735-1934, and on the authority

of the opinion, this Court holds that the Clerk has no lien prior to the lien of plaintiff's mortgage."

LIENS - MECHANIC'S

(Chambers Lumber Company v. Mrs. Annie Ruth Goforth Gilmer and HOLC; Court of Appeals of Georgia. Case decided in September 1939.)

Defenses to foreclosure of mechanic's or furnisher's lien.
Affidavit of contractor. Ninety-days limit for recording
lien.

In a suit to foreclose a mechanic's or furnisher's lien against property mortgaged to HOLC, the last item in the account that had been reduced to judgment against the contractor who had been paid in full, was more than ninety days prior to the recording of the lien. The Court held that the plaintiff, in order to circumvent the ninety-day statute, could not rely upon another and later item of material furnished to the contractor during the ninety days. The Court also apparently held that the taking of a statutory affidavit from the contractor at the time payment in full was made to him that all bills for labor and material had been paid, was a defense to the suit to foreclose the mechanic's or furnisher's lien.

LIENS - TAX - FORECLOSURE

(Town of West Hartford, et al v. Sedgwick Heights Corporation, et al; Superior Court, Hartford County, Connecticut. Case decided August 30, 1939.)

Foreclosure of tax lien on part of property in a subdivi-
sion held not to extinguish building restrictions pertain-
ing to all lots in the subdivision.

The Town of West Hartford, Connecticut, and its Tax Collector brought suit to foreclose tax liens on the unsold lots in a subdivision formerly owned and operated by one, Clark. The owners of the equity of redemption and the mortgagees of the lots that had been sold were also made parties defendant in an attempt to extinguish easements which they held in the unsold lots under foreclosure. The principal easement sought to be extinguished, particularly by the third prayer for relief in the bill, was a building restriction that prevented the erection on any lot in the subdivision of any structure but a single family dwelling costing not less than \$10,000. HOLC, being a mortgagee of one of the lots that had been sold and built upon, filed a demurrer.

In sustaining the demurrer, the court said: "The (tax) liens which the plaintiffs seek to foreclose are of a class which is a creature of statute, as are the means by which they may be enforced and the precedence which they have over other claims. *Meyer v. Burritt*, 60 Conn. 117, 122. Section 1233 of General Statutes fixes and defines these. Obviously, it does not purport to provide that any claim or encumbrance against the property upon which a tax lien exists becomes voidable on that account, or that the same may be extinguished at the prayer of the tax lien holder upon election to foreclose such tax liens. It is patently evident, too, that the relief sought in the third prayer for relief is not an attribute attending the existence of a tax lien created by statute, nor an incident to its enforcement by foreclosure proceedings. It is equally apparent that the complaint lacks allegations of fact suggestive of any equity, the recognition or effectuation of which would require the relief in question."

MORTGAGES - DEFICIENCY JUDGMENTS

(*Tompkins County Trust Co. v. Herrick et al*; Supreme Court, Tompkins County, 13 N.Y.S. (2d) 825.)

In a mortgage foreclosure action, judge who heard application for deficiency judgment could not act on his own familiarity with property, but proof of the fair and reasonable value of property was required. The right to a deficiency judgment is part of a mortgage contract protected against impairment by subsequent legislation, and there is no impairment of obligation of contract by a change in remedy if the obligation may still be enforced according to the course of justice as it existed at the time the contract was made. The decisions of the Supreme Court under the contract clause are binding on state courts.

This motion was made by defendant to vacate a deficiency judgment, following mortgage foreclosure, on the ground that the plaintiff failed to comply with section 1083 of the Civil Practice Act, as amended by Chapter 510, Laws of 1938 in effect April 7, 1938. The mortgage was given on October 2, 1933, to secure an indebtedness of \$16,500, and action to foreclose was commenced on May 28, 1938. Plaintiff bid in the property on the sale for \$5,000 and obtained a deficiency judgment for \$12,356.63, representing the difference between the mortgage debt and the bid.

"The old procedure was followed. Judgment was granted on the referee's report without notice. No proof was offered of the fair and

reasonable market value of the mortgaged premises as required by the new legislation. The judge who heard the application could not act on his own familiarity with the property. Plaintiff's argument to the contrary is without merit. Neither this nor any other justiciable issue may be determined upon a judge's personal knowledge of facts outside the record or upon personal investigation. *Central Hanover Bank & Trust Co. v. Eisner*, 276 N.Y. 121, 125, 11 N.E. 2d 561. The statute requires proof 'upon affidavit or otherwise' which means legal proof as upon any other question of fact. *New York Life Ins. Co. v. H. & J. Gutttag Corp.*, 265 N.Y. 292, 296, 192 N.E. 481."

The court said that Chapter 510, Laws of 1938, applied to mortgages given before its enactment as well as to those given after. The limitations on deficiency judgments are identical with those contained in section 1083-a of the Civil Practice Act. However, this section only applied to mortgages given before July 1, 1932, "on the theory apparently that the depression which led to the emergency began late in 1929 and the Legislature believed that the low point was reached about July 1, 1932. *Decker v. Dutcher*, 247 App. Div. 689, 691, 289 N.Y.S. 553, 555. The restriction, although criticised (*HOLC v. Roach*, 163 Misc. 760, 297 N.Y.S. 716) was rigidly enforced. *Chase v. Hawey*, 253 App. Div. 15, 1 N.Y.S. 2d 541; *Central National Bank of Yonkers v. Marks*, 243 App. Div. 526, 275 N.Y.S. 813."

It became apparent that an injustice was being done by excluding mortgages given after July 1, 1932, particularly when economic recovery continued to lag. So the new statute was designed in part, to remove the limitation. "The crucial question is whether Chapter 510, Laws of 1938, as so construed violates the contract clause of the Federal Constitution (Art. 1, Sec. 10, U.S.C.A.) The only decision thus far holds that it does. *HOLC v. Margolis*, 168 Misc. 945, 6 N.Y.S. 2d 432, Supreme Court, Westchester County, decided July 20, 1938. We cannot agree."

"It is undoubtedly true, as pointed out in the Margolis case, that the right to a deficiency judgment is part of the contract protected against impairment by subsequent legislation. *Barnitz v. Beverly*, 163 U.S. 118, 16 S.Ct. 1042, 41 L.Ed. 93; *New York Life Ins. Co. v. H. & J. Gutttag Corp.*, 265 N.Y. 292, 296, 192 N.E. 481. 'To know the obligation of a contract we look to the laws in force at its making.' *W. B. Worthen Company ex rel. Board of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark., v. Kavanaugh*, 295 U.S. 56, 60, 55 S. Ct. 555, 556, 79 L.Ed. 1298, 97 A.L.R. 905.

"It is also true, at least until recently, that cases upholding the validity of section 1083-a and kindred legislation are without

controlling force here. Constitutional justification was found for temporary restrictions on deficiency judgments in the policy power of the state during an emergency. *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 426, 54 S.Ct. 231, 78 L.Ed. 413, 88 A.L.R. 1481; *Klinke v. Samuels*, 264 N.Y. 144, 149, 190 N.E. 324; *Matter of People v. Title & Mortgage Guaranty Co. of Buffalo*, 264 N.Y. 69, 83, 190 N.E. 153, 96 A.L.R. 297; A. H. Feller, *Moratory Legislation*, 1933, 46 Har. Law Rev. 1061, 1081. "Emergencies, however, awake legislative powers that sleep in normal times." *New York Life Ins. Co. v. H. & J. Gutttag Corp.*, 265 N.Y. 292, 296, 192 N.E. 481, 482."

The new statute may be upheld, if at all, only upon a finding that there is actually no impairment in the constitutional sense. There is no impairment of a contract by a change in remedy if the obligation may still be enforced "according to the course of justice as it existed at the time the contract was made". The enforcement may be rendered less speedy or recovery more difficult but a change is still within the Constitution if it is not so substantial as to impair the value of the security.

"Tested by these principles, Chapter 510, Laws 1938, does not offend the contract clause. Those holding mortgages executed before the enactment may still enforce them. The right to deficiency judgment remains intact. The changes in procedure, viewed in the light of the existing law, are not so oppressive as to cut down the value of the obligation. Mortgagees may still recover their debts in full. The effect of the statute is to prevent recovery of more. More, whether in money or property, there was no right to collect, even before the enactment on principles of equity which the courts could and to a considerable extent did enforce."

In the case of *Honeyman v. Jacobs*, 59 S.Ct. 702, 83 L.Ed.-- the question was whether section 1083-a of the Civil Practice Act violated the contract clause, and the Supreme Court held that it did not. "It held, in substance, that there was no unconstitutional impairment of the obligation because the new procedure was not inconsistent with the inherent power of a court of equity over foreclosure sales and deficiency judgments."

"The decisions of the Supreme Court under the contract clause are binding on state courts. *McCullough v. Virginia* 172 U.S. 102, 109, 19 S.Ct. 134, 43 L.Ed. 382. Chapter 510, Laws of 1938, is identical with section 1083-a of the Civil Practice Act. . . . The statute is constitutional and the motion to vacate the deficiency judgment must be granted."

LIENS - MECHANICS'

(Disbrow & Co. v. Peterson et al; ---Nebr.---287 N.W. 220.)

The purpose of the mechanics' lien statute is to protect the diligent contractor, sub-contractor, or laborer.

This action was brought to foreclose a mechanics' lien. The plaintiff, a sub-contractor, furnished millwork to a contractor in the erection of a duplex house. The defendants are the contractor and the owner of the property. The only questions involved on this appeal is the right of plaintiff to a lien on defendant Peterson's property.

The plaintiff furnished materials to the contractor for the building of the house for Peterson and made final delivery of all items, except two window screens, on October 30, 1936. Plaintiff sent the contractor a bill on October 30, 1936, for the full contract price of his contract, explaining, however, that such bills were often sent out ahead of full delivery for the convenience of the contractor in making estimates and collections. The above two screens were included in the total making up the final bill. A final bill was later sent on November 12, 1936. On May 6, 1937, the plaintiff delivered two window screens to the premises.

On July 1, 1937, the mechanics' lien was filed. It appears that the reason plaintiff did not deliver the screens was because they did not have them in stock at the time and furthermore that they do not deliver goods except on order and that defendant contractor had not ordered the screens until May 6, 1937, when they then were delivered. It further appears that the defendant Peterson did not know that the screens were to be a part of the house and was living in it as if the house had been completely finished.

"Under the provisions of section 52-102, Comp. St. 1929, the statement of the amount due the sub-contractor must be filed within sixty days from the furnishing of such material. It must be conceded that the plaintiff has no lien unless the delivery of May 6, 1937, brings plaintiff's claim within the statute. 'The risk of all payments made to the original contractor shall be upon the owner until the expiration of the sixty days' provided in section 52-102, during which time the statement for the lien may be filed. Obviously, after sixty days have elapsed following the last delivery, the owner can pay the contractor in safety. It is clearly the purpose of the statute to protect the diligent sub-contractor if he acts within a specified and limited time."

The court then concluded by saying: "It is obvious that the

statute does not contemplate a lien under the circumstances here shown. 'If the time which is restricted by the statute can be thus indefinitely extended by acts of this kind, the 60-day limitation fixed by the Legislature in which to file this class of liens can and will be utterly and completely defeated, so that, in every case where a right to file a lien has ever existed, the title to the property may, for an indefinite period, remain in an unsettled and not ascertainable condition, with reference to the character and extent of the mechanic's liens which may be claimed against such property.' *Gen State Lumber Co. v. Witty*, 37 Idaho 439, 217 P. 1027, 1030.

"'After a contract is substantially completed there must be no unnecessary or unreasonable delay under all the circumstances in fully completing the work, and the time for filing a lien cannot be extended by a delay for a considerable time to do a small piece of work necessary to full completion.' 40 C.J. 198, and cases there cited."

TAXATION

(*Commonwealth v. Stone*, Court of Appeals of Kentucky, 130 S.W. (2d) 750.)

A statute providing that holder of legal title, holder of equitable title, and claimant or bailee in possession of property when assessment is made should be liable for taxes thereon, was intended merely to fix liability for taxes as between such persons, and was not intended to make any of such persons personally responsible to taxing authorities to extent of subjecting them to personal judgment as though a tax were a debt.

Sam H. Stone was the holder of the legal and equitable titles to certain real estate located in Jefferson County, Kentucky, which was assessed for state, county and school taxes for the period from July 31, 1931, to July 1, 1936. Upon his failure to pay these taxes the property was sold by the sheriff of Jefferson county and purchased by the state for the amount of the taxes, penalties and costs.

In March 1939, the appellants brought this suit in the Jefferson circuit court and alleged that the sales or attempted sales of real estate in satisfaction of said taxes were void and asked that the sales be set aside and sought to be adjudged a lien against the real estate for the taxes, and further sought personal judgment against Stone for the amount of the taxes in addition to the lien on the real estate.

Stone not having answered to the action, the appellants prepared and tendered a judgment by default adjudging that the respective taxing authorities have a lien against the property for the taxes and also a personal judgment against Stone. The chancellor, however, refused to render a personal judgment against Stone. Appellants now seek a reversal of this judgment, and the sole question on this appeal is whether or not appellants are entitled to a personal judgment against Stone.

Appellants rely upon Sections 4023 and 4036 of the Kentucky Statutes. The pertinent part of Section 4023 reads as follows: "The holder of the legal title, and the holder of the equitable title, and the claimant or bailee in possession of the property on the first day of July of the year the assessment is made, shall be liable for taxes thereon; but, as between themselves it shall be the duty of the holder of the equitable title to list the property and pay the taxes thereon, whether the property be in possession or not at the time of the payment"

"Section 4036 of the statutes provides that whenever any person shall purchase property sold for delinquent taxes, and the sale shall be set aside because of any irregularity, except where the owner has paid his taxes and has a receipt for same, the purchaser shall have a lien on the property for the amount of taxes and costs paid by him, and for which the property is liable, with legal interest which may be recovered from the owner of the property or person owning the same. . . .

"Appellants insist that the language of Section 4023 of the statutes, 'the holder of the legal title . . . shall be liable for taxes thereon', means that in addition to a lien against the property for taxes, the holder of such title mentioned in the statute, shall be personally liable and that a personal judgment may be rendered against him and the amount of taxes may be collected out of any other property or assets of the holder of the title, the same as any other debt . . .

"To hold the owner of real estate personally liable for taxes assessed against real estate, as between the owner and the taxing authorities, would be in effect classifying such taxes as a debt in the ordinary meaning of the word. In *Jones v. Gibson*, 82 Ky. 561, it is held that taxes have never been held by elementary law writers, or courts, as debts in the ordinary meaning of the word, nor have they been so treated by the legislative or judiciary departments of this State. Also, in *Anderson v. City of Mayfield*, 93 Ky. 230, 19 S.W. 598, 14 Ky. Law Rep. 370, it is said: 'A tax grows out of a duty, and not out of contract. It is not collectible by suit unless expressly authorized. It is not a demand founded upon a contract or a judgment.' See, to the same effect, *Baldwin v. Hewitt*, 88 Ky. 673, 11 S.W. 803, 11 Ky. Law Rep. 199; *McLean*

County Precinct v. Deposit Bank of Owensboro, 81 Ky. 254.

"In Newport & Cincinnati Bridge Company v. Douglass, 12 Bush 673, 75 Ky. 673, it is said: 'The tax is not a mere debt due from the citizen to the government, and the courts have no power to treat it as a debt without the express sanction of the legislature.' See also 26 R.C. L. sections 11, 339, 380, 61 C.J. Sec. 1353, P. 1040; Cooley on Taxation, Vol. 1 (4th Ed.) Section 22; Vol. 3, (4th Ed.) Section 1326.

"Appellants do not contend that such taxes as are here involved constitute a debt for which a personal judgment may be rendered against the owner of the property, in the absence of statutory authority for such proceeding. It is argued, however, that section 4023 of the statutes furnished such authority.

"If it is conceded that the language in section 4023 of the statutes is more or less ambiguous, yet under the rule that tax laws are construed more strictly against the taxing authorities, we do not think that the statute is susceptible to the construction contended for by appellants. It is our view that the statute (section 4023) has reference to liability for the taxes as between the class of persons mentioned therein, namely, the holder of the legal title, the equitable title and claimant or bailee in possession of the property when the assessment is made, and as between vendor and purchaser; but does not undertake to hold any of the holders of such titles mentioned personally responsible to the taxing authorities to the extent of subjecting them to a personal judgment as though the tax were a debt."

The court concluded by referring to the 1938 Act which now provides that every tax imposed by law shall constitute and be a personal debt of the person liable for the payment thereof. It said: "Evidently, the legislature did not consider Section 4023 sufficient to warrant a personal judgment against the owner of real estate for taxes assessed against it, previous to the 1938 Act, and therefore, specifically provided in the 1938 Act that every tax imposed by law shall constitute and be a personal debt of the person liable for the payment thereof. It is thus seen that we now have express statutory authority for appellants' position. But there is no contention that the 1938 Act has a retroactive effect, or otherwise applicable to the taxes in question."

ZONING

(Skalko v. City of Sunnyvale, Calif.;---Calif.---, 93 P. 2d 93.)

See also 61 HLD p. 20.

Where the exercise of police power in enactment of zoning ordinance results in consequences which are oppressive and unreasonable, courts will not hesitate to protect the rights of the property owner against unlawful interference with his property. A municipal zoning ordinance was void as to owner of property in residential district, the boundary line of which was also boundary line between residential and industrial districts, where large cannery operating 24 hours a day for nine months in the year was located near property and near where trains passed day and night.

The appellant, owner of real property within a residential zone of the City of Sunnyvale, sought a declaratory judgment that a zoning ordinance restricting the use of his property is void, as to him. It appears that his property is bounded on the north by an industrial district. All property in Sunnyvale is classified in either a residential, commercial or industrial zone. In this particular industrial district, only 100 feet from appellant's property, is the largest cannery in the world, working three shifts of employees night and day. The area around the appellant's property is sparsely settled, and devoted to agricultural use. The buildings in the neighborhood have a low value.

There is heavy automobile and truck traffic in front of appellant's property all year round. Nearly 80 trains pass daily within 450 feet of the property. The machinery of the cannery and steam blasts therefrom can be heard plainly. Desiring to operate a cafeteria on his property he petitioned to have his property included in the business district but it was denied. His main contention is that the present restriction upon the use of his property may not be upheld as a reasonable exercise of the police power to protect public health, safety, morals and general welfare. In upholding his contentions and reversing the trial court, the Supreme Court of California said:

"The constitutionality of the principle of zoning is no longer an open question, and the right of a municipality to divide land into districts and prescribe regulations for its use, consonant with a reasonable exercise of the police power, has long been upheld by the courts. Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 38 A.L.R. 1479; Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016. Such an enactment must be considered with every intendment in its favor, and a court will not, except in a clear case, interfere with the legislative discretion which has been exercised in its adoption.

Unless the measure is clearly oppressive it will be deemed to have been adopted within the purview of the police power. *Zahn v. Board of Public Works*, 195 Cal. 497, 234 P. 388. But where the exercise of that power results in consequences which are oppressive and unreasonable, courts do not hesitate to protect the rights of the property owner against the unlawful interference with his property. In other words, the governmental power is not unlimited, and a regulation of the use of property must rest upon a reasonable exercise of the police power. *Nectow v. Cambridge*, 277 U.S. 183, 48 S. Ct. 447, 72 L.Ed. 842. Legislatures may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities. *State of Washington ex rel. Seattle Trust Co. v. Roberge*, 278 U.S. 116, 49 S.Ct. 50, 73 L.Ed. 210, 86 A.L.R. 654.

"Also, the police power must be applied to existing conditions. *Miller v. Board of Public Works*, supra. 'The principle that a police regulation, valid when adopted; may become invalid because in its operation it has proved to be confiscatory, carries with it the recognition of the fact that earlier compliance with the regulation does not forfeit the right of protest when the regulation becomes intolerable.' *Abie State Bank v. Bryan*, 282 U.S. 765, 51 S.Ct. 252, 257, 75 L.Ed. 690. Where conditions have changed since the legislative action was taken, 'statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall.' *Euclid v. Ambler Realty Co.*, supra (272 U.S. 365, 47 S.Ct. 118, 71 L.Ed. 303, 54 A.L.R. 1016.) The question therefore, is whether under the facts shown by the appellant his rights are now being invaded by the existence and maintenance of the ordinance.

"Considering all the facts shown by the record, it clearly appears beyond question that the land owned by the appellant is entirely unsuited for residential purposes . . . In its application to the land owned by the appellant, the ordinance is void. *Hurst v. City of Burlingame*, 207 Cal. 134, 277 P. 308."

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

FARM CREDIT ADMINISTRATION: The Land Bank Commissioner by order filed September 18 amended the Code of Federal Regulations with regard to the computation of fees to be charged upon the making of additional loans by the Federal land banks or Land Bank Commissioner. See 4 Fed. Reg. 3955.

The Governor by regulation filed September 25 authorized the Director of the Emergency Crop and Feed Loan Section, subject to the control of Deputy Governor Lyons, to execute all functions, powers, authority and duties vested in the Governor of the FCA and established an order of precedence for the performance of such functions in the event that the Director is unavailable to act. See 4 Fed. Reg. 4043-4.

The Governor by regulation filed September 29 designated the authority and order of precedence of the Deputy Governor, Executive Officer, General Counsel, Director of Finance and Accounts, and Assistant to the Governor. See 4 Fed. Reg. 4095.

FEDERAL HOUSING ADMINISTRATION: The Administrator by regulations filed September 18 amended the Administrative Rules and the Regulations with regard to Farm Mortgage Insurance under section 203(d) of the National Housing Act. See 4 Fed. Reg. 3963-4.

The Administrator by orders filed September 25 and 26 amended the regulations in connection with improvement loans under Title I of the National Housing Act, as amended. See 4 Fed. Reg. 4062-3.

FEDERAL HOME LOAN BANK BOARD: The FHLBB by resolution filed September 13 amended its rules and regulations with regard to annual reports by members of Federal Home Loan Bank System. See 4 Fed. Reg. 3902.

Home Owners' Loan Corporation: The FHLBB by regulations filed September 21 and 22 amended the Code of Federal Regulations (1) to authorize the General Manager to grant extensions and change the payment plan contained in the loan or sale instruments and make advances for payment of taxes, assessments, etc., in connection therewith; (2)

to reduce the interest rates on payments becoming due on and after October 16 to $4\frac{1}{2}$ percent in cases where the contract rate was 5 percent or 6 percent; (3) to authorize the General Manager to waive the obtaining of releases or waiver of liens which may arise in connection with reconditioning work provided that the assumed risk shall in no case exceed \$500; (4) to provide that the interest charged on any advance heretofore made shall be at the rate specified in the advance or the rate specified in the original loan whichever is lower; and (5) to authorize the General Counsel to purchase, sell, exchange and maintain law books for law libraries in the Home Office. See 4 Fed. Reg. 4032-4034.

The General Manager and General Counsel by regulation filed September 19 promulgated a procedure for the handling of miscellaneous credits and for the payment of taxes by the Regional Manager. See 4 Fed. Reg. 3989.

The General Manager and General Counsel, by administrative orders filed September 21 and 22, (1) authorized the Regional Managers under prescribed conditions to convert installment contracts into mortgage accounts notwithstanding such conversion might operate to release the liability of the original purchaser; (2) authorized advances to be made for reconditioning to enable a homeowner (a) to sell his property to an acceptable purchaser, (b) to retain tenants on the property, or (c) to regain rental income, where the cost of such reconditioning does not exceed \$100; (3) prescribed the forms to be used to evidence the release or waiver of liens for labor and material; (4) made special provision for the handling of paid-in-full loans in the Parish of Orleans, Louisiana. See 4 Fed. Reg. 4032-4035.

RURAL ELECTRIFICATION ADMINISTRATION: The Acting Administrator by order filed September 19 allocated funds for loans for projects under section 4 of the Rural Electrification Act of 1936, as amended. See 4 Fed. Reg. 3998.

The Acting Administrator by orders filed September 28 allocated funds for projects under sections 4 and 5 of the Rural Electrification Act of 1936, as amended. See 4 Fed. Reg. 4103.

LEGAL COMMENT

MORATORY LEGISLATION: A COMPARATIVE STUDY. Harvard Law Review.
Vol. XLVI, No. 7. May 1933.

Since recent results of mortgage foreclosure actions indicate the emergency supporting moratoria legislation no longer exists, this article is of particular interest.

The article is introduced by a history of moratoria legislation from the early Greek era to the date of its publication. It is a significant fact that this type of legislation usually occurred during war periods or other crises. Different types of moratoria are reviewed which indicate the various devices for alleviating distress both by legal enactments and cooperative agreements. The constitutionality arguments for the moratoria have been based upon precedent, logic and against the "pressure of events". "A moratorium is essentially for the protection of debtors." The compensation to the creditor is the fact that the moratoria provides the opportunity for payment which without it he might never have had.

"The general moratorium has vindicated itself time and again as an indispensable instrument for the resolution of economic crises. The task of the legislature is to draft moratory legislation with careful consideration of all the interests involved, and of the possible legal effects of the statute. The detail of such statutes must depend on the peculiarities of local procedure. The courts when faced with the tasks of construing these statutes and of passing upon their constitutionality must do so in full awareness of what the Germans call 'die normative Kraft des Faktischen', the normative force of facts. The legal armory is plentifully furnished with precedents either for or against the constitutionality of such legislation. In the last analysis the choice to be made among conflicting precedents and principles will depend upon the sensitiveness of the court to the dangers threatening the general economic structure."

A review of this article at this time naturally stimulates some thought on the problem, at what point does the crisis which necessitated the moratoria cease to exist? A discussion of these circum-

cumstances together with the limitations incorporated in the legislation and the perogatives exercised by the courts, could form the basis of an up-to-date article, gathering together current thought on the subject.

SOVIET HOUSING LAW. by John N. Hazard. New Haven, Yale University Press, 1939. pp. IV, 178. \$2.50.

This volume is the result of three years' study in a Soviet law school and three years of living in housing accommodations of the type which the author discusses. As a result of this background, the volume is as much concerned with the social implications of the Soviet approach to the housing problem as it is with problems which might be considered strictly legal. It is in no sense a handbook for an attorney who might practice Soviet housing law, but rather a description of the Soviet attempts to meet the housing problem, which would be of interest to American students of housing problems regardless of whether or not they are lawyers.

In presenting his material Mr. Hazard has approached the problem with a great deal of sympathy for the efforts which the Russians have made to solve the housing problem. Although he points out that even though they may be regarded as having solved the legal problems of housing as they appear under their social system, and despite great construction efforts, nevertheless Russia is still faced with an acute housing shortage.

Many of the differences between the common law and the Soviet law covering relationships of landlord and tenant may be traced to the fact that the entire Soviet system of housing law has been developed under situations of acute shortage so that there has always been a necessity for detailed regulation and allotment of housing space, which has been approached in this country only in the Emergency Rent Laws of the World War period, in the cities of New York and Chicago. In addition, Communist philosophy has resulted in a deliberate effort to eliminate any profit in the leasing of housing accommodations and, while rent is retained as a part of the system, it is regarded as a charge to produce a fund with which repairs can be made, and not as a way in which profit may be made from housing accommodations. On a large scale, profits are eliminated by the fact that apartments are owned in general either by the municipalities or by state enterprises. But the effort to eliminate profits has been carried over into the regulation of sub-leasing and the regulation of rental charges and allotment of space in the small houses which still remain in private ownership.

These two fundamentally different conditions have created a situation which is extremely interesting, and Mr. Hazard's account of how they have worked out in detail in the past 20 years makes fascinating reading for those who are interested in social experiments. Throughout the book the author has told of the details of cases which have arisen, and shows how the principles of law, and a vague belief that all persons have a right to living space, have operated in the daily lives of the people. In addition, the volume contains in an appendix a model lease, such as is used in state-owned apartments, and the housing law of 1937, as well as a model lease used by a cooperative housing organization.

GOVERNMENT CORPORATIONS AND STATE LAW. by Ruth G. Weintraub.
Columbia University Press, N. Y. 200 pp. \$2.75.

This book presents a graphic survey of the actual functioning of Federal corporations under various state laws and is based upon the author's study of the experiences of such corporations as the Home Owners' Loan Corporation. It is of interest to note that between 1929 and 1938 at least 38 such Federal corporations were formed. The author is an instructor in political science at Hunter College and a member of the New York bar.

THE HOUSING ACT AND ITS LEGAL ASPECTS. by Abner H. Ferguson
General Counsel, FHA. Insured Mortgage Portfolio. September 1939.

Creation of the Federal Housing Administration under authority of the National Housing Act in June 1934 represented, primarily, an attempt to set up a mechanism which would encourage private capital to resume mortgage lending on a sound and profitable basis. The Act in no way involved the lending of government money; the FHA hasn't a dollar of such funds to lend.

The FHA, its scope, powers, and activities are defined and dealt with in the Act's first three titles.

Title I is designed to encourage the installment lending of money by financial institutions to citizens for purposes of repairing and modernizing their property. Under this Title's present provisions, the FHA insures individual institutions against loss on such loans up to 10 per cent of the total amount of loans they make. Prior to July 1, there

was no charge for this insurance--it was an out-and-out subsidy to create employment. On Title I loans made since then, however, a premium charge of three-quarters of 1 per cent per annum has been authorized. The current rate charged is three-quarters of 1 per cent for repair loans and one-half of 1 per cent for new-home loans.

Title II of the Act deals with mortgage insurance for two classes of residential property--individual houses and large-scale rental projects.

For individual houses, it sets up a plan, designed to be self-sustaining, under which approved private lending institutions are insured against loss of mortgage principal and of such amounts as they may advance for taxes and other specified items in connection with mortgage loans.

To provide a revolving fund which operates as a reserve account to meet these losses, the Act created the Mutual Mortgage Insurance Fund, and directed the Reconstruction Finance Corporation to allocate to this Fund \$10,000,000.

This insurance does not cover the whole risk, for the mortgagee bears the obligation and expense of foreclosing the mortgage after default and conveying the property to the Administrator unencumbered. The mortgagee, therefore, becomes a coinsurer to the extent of the foreclosure costs (except for certain allowances in specified types of cases), conveyancing, and other expenses.

Upon conveyance of the property to the Administrator, the mortgagee receives in exchange $2\frac{3}{4}$ per cent debentures of the Mutual Mortgage Insurance Fund and a certificate of claim. These debentures are the primary liability of the Fund, are guaranteed as to principal and interest by the government, and are exempt from all taxation except surtaxes, estate, inheritance, and gift taxes. They do not become due until three years after the first of July following the date maturity of the mortgage insured.

The certificate of claim the mortgagee receives under the FHA plan is for an amount equal to the difference between the debenture and his total claim under the mortgage, and is a contingent claim against the resale price of the property.

The Administrator charges a premium for this insurance of one-half of 1 per cent per annum of the outstanding principal amount of the mortgage. These insurance premiums, together with FHA appraisal fees and income from investments, are added to the original \$10,000,000 allocated

to the Mutual Mortgage Insurance Fund.

The insurance of mortgages on large-scale rental properties is based upon the same general principles that cover the insurance of individual house mortgages. There are, however, several fundamental differences:

First, the mortgagors must be either public instrumentalities or private corporations, associations, cooperative societies or trusts, formed for the purpose of providing housing for rent or sale and which are, so long as the mortgage continues in existence, regulated by the Administrator so as to provide reasonable rentals and a reasonable return on the investment.

Second, a mortgage, to be eligible for insurance must meet the following qualifications: (1) it must not exceed \$5,000,000; (2) it must not exceed 80 per cent of the amount which the Administrator estimates will be the value of the property or project when the proposed improvements are completed, nor may it exceed the amount which the Administrator estimates will be the cost of the completed physical improvements on the property exclusive of public utilities and streets, organization expenses, and miscellaneous charges incidental to construction; and (3) it must not exceed \$1,350 per room for such part of the property as may be attributable to dwelling use.

Finally, a mortgagee can elect to assign a defaulted rental-housing mortgage to the Administrator without foreclosure and receive debentures in an amount equal to 98 per cent of the unpaid principal.

Title III of the Act provides for the creation by the Administrator of corporations known as national mortgage associations. These associations are authorized to make, purchase, service, or sell any loans insured by the Administrator and are also authorized to buy uninsured mortgages which do not exceed 60 per cent of the appraised value of the property. They are required to have a capital stock of not less than \$2,000,000 and are subject to the supervision of the Administrator in the same way that national banks are supervised by the Comptroller of the Currency. They are authorized to borrow money up to 20 times their capital, except that they are not permitted to have outstanding at any time obligations in insured mortgages, cash, and government bonds.

Only one such association has been formed thus far--the Federal National Mortgage Association, organized by the Reconstruction Finance Corporation.

There are two general grounds on which the constitutionality of the National Housing Act may be sustained. The first is the generally conceded obligation of the Federal government to provide a national system of financial institutions for handling the credit, finance, and currency requirements of the country. The right of the government to set up institutions for this purpose has been repeatedly exercised and repeatedly approved by the Supreme Court.

In 1934, private banking instrumentalities having largely discontinued making real estate mortgage loans, the only feasible means of restoring the normal flow of this type of security appeared to be through some public instrumentality.

Congress took temporary steps in this direction through creation of the Home Owners' Loan Corporation; permanent steps through creation of the Federal Housing Administration. That the establishment of these instrumentalities constituted a successful effort to meet a desperate situation in the real estate mortgage field is hardly disputed today.

The Act may also be sustained under the interpretation given the general welfare clause of the Constitution by the Supreme Court in the Agricultural Adjustment Act case (*United States v. Butler*, 297 U. S. 1; and in *Helvering v. Davis*, 301 U.S. 619) and other companion cases decided in May 1937, sustaining the validity of the Social Security Act. Since the *Helvering* case decision, we have heard no doubts expressed as to the constitutional validity of the Act.

The National Housing Act, while complicated, defines in detail the power and authority of the Administrator and thus avoids the fatal defects in the National Recovery Act as revealed by the *Schechter* case.

One of the early and most difficult tasks of the Legal Division concerned enabling legislation in the various states to permit lending institutions to operate under the Act. The terms of loans that might be insured under both Titles I and II were in excess of the terms permitted most types of institutions in almost all the States. The extent of the task of examining the various state laws and of preparing and sponsoring necessary amendments before the legislatures can readily be imagined. FHA representatives appeared personally before practically every state legislature with the result that lending institutions in all states were permitted to make both Title I and Title II loans within 18 months after the Act was passed.

The excessive time and expense required for foreclosure under the mortgage laws of many states and the wide variations in these laws

present an unsolved problem. The implications of these conditions with respect to high-percentage mortgages and the need for their correction are obvious. A movement in the latter direction has been made by a sub-committee of the Central Housing Committee (composed of the general counsel of government agencies dealing with mortgage financing), which after extended study has drafted a proposed uniform mortgage-foreclosure law. This proposed law is now being studied by the National Conference of Commissioners on Uniform State Laws, the American Bar Association, and other interested organizations.

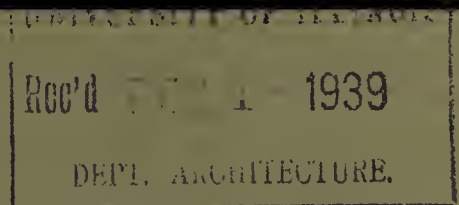
A similar need for revision exists in connection with state laws concerning mechanic's liens, titles, and taxation. These problems likewise are being studied by the sub-committee.

If these existing laws can be revised and made uniform, it will be of enormous benefit to mortgage financing generally.

· HOUSING · LEGAL DIGEST

NUMBER 64

NOVEMBER 1939



"If aiding business establishments and farmers, through loans, is within the ambit of governmental authority, aids to improve housing certainly are. For, in these days of congestion of population, nothing is more conducive to the health and contentment of the community than proper housing."

United States v. Brooks.

(See DECISIONS)

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

HOUSING LEGAL DIGEST

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A new publication under the sponsorship of the New York City Civil Service Commission will appear in the near future on public personnel administration. The Public Personnel Quarterly will publish original articles concerned with practical phases of public personnel administration and will also present digests of significant books, monographs and journal and magazine articles. Further inquiries should be addressed to the Commission at 299 Broadway, New York City.

DECISIONS

BANKS AND BANKING

(United States v. Brooks, et ux. District Court, N. D. Washington S. D., 28 Fed. Supp. 712)

The National Housing Act is constitutional. Congress has the right to confer power on private banks, to regulate them, and to legislate and appropriate money for general welfare.

The United States Government sued the defendants to recover upon a promissory note executed by them to a national bank and assigned to the government. The note represented credits extended to the defendants under the provisions of Title I of the National Housing Act, 12 U.S.C.A., Section 1702, et seq.

The defendants challenged the constitutionality of the enactment.

The court said that "The right of the congress to confer powers on private banks, to regulate them, and to legislate and appropriate money for general welfare, are so well recognized, that to enter, as do the defendants, into a discussion of whether the government should be the sole banker, is not even of academic interest. [citing cases.]

"If aiding business establishments and farmers, through loans, is within the ambit of governmental authority, aids to improve housing certainly are. For, in these days of congestion of population, nothing is more conducive to the health and contentment of the community than proper housing.

"Whether the policy involved should or should not be followed by the government is a matter of legislative, and not of judicial, concern.

"So that, in the last analysis, the question involved is simple. The defendants borrowed money from a national bank. The bank assigned their promissory note to the United States Government. The defendants having received the benefits of the money, and not having repaid it, are not in a position to question the right to be sued for it. The loan was not forced on them, but sought by them.

"And in the absence of limitation or illegality in the contract, a person cannot, in equity and conscience, decline to repay money which he has borrowed or which has been spent for his benefit, at his solicitation."

CONSTITUTIONAL LAW - HOUSING AUTHORITY

(The Housing Authority of the County of Los Angeles v. Dockweiler. Opinion decided October 11, 1939)

The Housing Authorities Law of California is constitutional.

This suit involved a writ of mandamus to compel the chairman of the Housing Authority to perform certain duties alleged to be enjoined upon him by law. Respondent entered a general demurrer contending his refusal to act was based upon the unconstitutionality of the Ohio Housing Authorities Law.

The Supreme Court of California overruled the demurrer and ordered the writ to issue. The opinion sanctions the California housing legislation as constitutional, holding especially:

(1) Elimination of slums and the erection of safe and sanitary, low-rent dwelling units for persons of prescribed restricted income will do much to advance the public welfare and to protect the public safety and morals and are in fact and in law public purposes.

(2) Housing projects constitute a public purpose for which the power of eminent domain may be exercised.

(3) Tax exemption of housing authority property, including bonds, is constitutional.

(4) Public bodies may cooperate in zoning and rezoning or furnish customary facilities to such projects. Agreement to eliminate unsafe and insanitary dwellings is not objectionable.

(5) There is no objection to appropriations by a city or county to be used by a housing authority established as an agency of a city or county.

(6) No debt or liability is imposed on a city or county by the bonds issued by a housing authority.

(7) Cities and counties may invest in housing authority bonds. The legislation does not constitute such legislation or result in the granting of special privileges.

(8) There is no delegation of a legislative function.

CONSTITUTIONAL LAW - HOUSING AUTHORITY

(Lott v. City of Orlando, et al. Opinion filed September 26, 1939)

The Housing Authority Law of Florida is constitutional.

This proceeding involved a complaint by a taxpayer and landowner of the City of Orlando to restrain the city from making contributions to the housing authority, from complying with a cooperative agreement entered into between the city and the Authority, from complying with the equivalent elimination agreement entered into between the city and the Authority, and from furnishing of services of officers of the city to the Authority.

It was contended that there was no need for the particular project; that it would result in increased taxes and vacant dwellings owned by taxpayers; that the housing law of Florida was unconstitutional because it grants to municipalities the power to invest in housing authority bonds; that the slum-clearance project is a responsibility of the county and not the city; that the expenditure of city funds for the benefit of housing authorities is ultra vires, unconstitutional and constitutes the taking of property without due process of law.

The Supreme Court of Florida affirmed the opinion of the lower court dismissing the bill and reaffirmed its decision in Marvin v. Housing Authority of Jacksonville, 133 Fla. 590, 183 So. 145, dismissing all objection as without merit.

CONSTITUTIONAL LAW - HOUSING AUTHORITY - GOVERNMENTAL FUNCTIONS

(Kreshtool v. Housing Authority of Baltimore City, et al. In the Circuit Court No. 2, of Baltimore City)

The purposes and aims of the Maryland Housing Authorities Law fall within the scope of a public governmental function.

This was a taxpayer's suit to enjoin the construction of a housing project on a large tract of unimproved land within the City of Baltimore. The complaint charged that the project was not planned for the benefit of dwellers of slum areas; that the project was contrary to the terms of the Housing Authorities Law of Maryland because it did not provide for (a) clearing of a slum area or (b) demolition of any

unsafe or insanitary buildings, or (c) the elimination of any overcrowded area; that construction upon unimproved land in a suburban section was not authorized by law; that the area of the site was not a slum; and that the project would be in competition with private enterprise.

It was further charged that if the Housing Authorities Law authorized the project under the circumstances the Constitutions of Maryland and the United States would be violated: (1) because the powers conferred upon the Housing Authority are arbitrary, unjust and discriminatory, designed to create a favored class; (2) because of delegation of legislative authority to an administrative body without sufficient standards; (3) because of lack of provision for appeal from actions of the Authority to the courts; and (4) because the furnishing of housing accommodations at the expense of taxpayers is not a governmental function.

There was a demurrer to the bill challenging its legal sufficiency and the right of plaintiff to maintain the action.

The court sustained the demurrer and from a review of provisions in the Housing Authorities Law found the proposed housing project to be within the powers expressly conferred thereby and that the purposes and aims of the Housing Authorities Law fall within the scope of a public governmental function.

With reference to the construction of a project on non-slum areas, the court said: "Clearing slum areas and providing decent dwellings for persons of low income are related and complementary projects, but the Act does not contemplate or require that the Housing Authority shall place new dwelling house construction only on slum areas which have been cleared. Neither does the Act require that 'persons of low income' for whom living accommodations are to be provided, shall have been formerly dwellers in a slum area which has been cleared. The Act aims at the prevention of the growth and development of new slum areas as well as the reduction of existing slum areas . . ."

CONSTITUTIONAL LAW - MORTGAGES - MORATORIUM

(Mitchell v. First National Bank of Detroit, Mich.
, 287 N.W. 351)

The statute providing that extension of moratorium provisions of mortgage moratorium act shall apply only to persons having any freehold interest in homesteads is not unconstitutional as class legislation.

Plaintiff mortgaged two lots to the Peoples' Wayne County Bank. Subsequent to foreclosure plaintiff's bill of complaint for moratorium relief resulted in an order for possession upon the payment of \$30 per month and the extension of the equity of redemption until November 1, 1938, or until further order of the court. Defendant thereafter filed a motion to dissolve the restraining order and to dismiss plaintiff's bill of complaint on the ground that the premises involved were not a homestead as described in section 14 of Act No. 7 of the Public Acts of 1938, Extra Session.

The lower court found that "the premises in question do not come within the meaning of the language of the moratorium extension act known as House Enrolled Act No. 6 (sic) of the Special Session of the Legislature for 1938".

The court dissolved the order for possession, set aside the restraining order and dismissed plaintiff's bill of complaint.

The Supreme Court of Michigan affirmed the lower court's decision and held that the above act was not unconstitutional and void as class legislation. It said that "The situation thus presented is controlled by our decision, filed June 5, 1939, in Schurgin v. Bankers Trust Co., 289 Mich. 70, 286 N.W. 161, wherein we held that the act was constitutional."

CONSTITUTIONAL LAW - MUNICIPAL CORPORATIONS - MANDAMUS
(State of Ohio, ex rel Ellis v. Sherrill. June 21, 1939)

A petition was issued for a writ of mandamus to compel the city manager to sign and execute a contract as set forth in a city ordinance of the City of Cincinnati with reference to cooperation between the city and the Metropolitan Housing Authority.

As grounds of defense it was alleged that the Housing Authorities Law of Ohio was unconstitutional; that certain ordinances and contracts adopted and entered into pursuant to said law were invalid. The third defense specifically alleged that the proposed housing project was to be constructed on vacant land in suburban (and not slum) sections of Cincinnati; that it would not be low-rent housing as defined by the United States Housing Act; that it would not be slum-clearance within the meaning of that Act; and that the making of a loan by the United States Housing Authority for such a project was unauthorized under the United States Housing Act.

There was a demurrer to the allegations of the answer.

The action of the Supreme Court was as follows: "This cause came on to be heard upon the demurrer of the relator generally to the allegations contained in the answer to relator's petition and in the answer to the amendment and supplement to the petition, and specially to the second defense of the answer on the ground that the respondent has not the legal capacity to maintain the second defense, and was argued by counsel.

"On consideration whereof it is ordered and adjudged that the demurrer be, and the same hereby is, sustained as to the second, fourth, fifth, sixth and seventh defenses, but overruled as to the third defense contained in said answer.

"It is ordered that relator be granted 20 days within which to plead further."

(NOTE: It appears that the action of the court above sustains the general constitutionality of the Housing Authorities Law of Ohio, but that the case was referred on question of fact.)

MUNICIPAL CORPORATIONS

(Bachman, et al. v. Goodwin, et al. ____ W. Va. ____, 3 S.E. (2d) 532.)

An ordinance proposed by petition signed by 1,000 electors of city for repeal of ordinance relating to housing authority created by resolution of council was "legislative" in character, was within the city charter, and should have been submitted to vote of people.

A mandamus proceeding was brought to compel the City Council of Wheeling, West Virginia, to submit a proposed ordinance to a vote of the people. A demurrer to the answer to the petition was sustained by the circuit court which certified the questions arising upon its ruling to the Supreme Court of Appeals.

In December 1937 the Council, pursuant to statute, adopted a resolution creating the Wheeling Housing Authority whose members were subsequently appointed by the Mayor. In December 1938 the Council adopted an ordinance recognizing the tax exempt character of the Authority, agreeing to furnish the usual municipal services to the Authority, and approving a contract and its execution with the Authority for the construction of housing in the City.

In February 1939 a proposed ordinance, repealing the ordinance of December 1938, was presented to the Council by petition signed by

more than 1,000 electors, praying that the Council adopt the proposed repeal ordinance or submit it to a vote of the people. The Council refused either to adopt or submit pursuant to a section of the City Charter providing: "Any proposed ordinance may be submitted to the council by petition, signed by one thousand electors of the city", and providing the procedure to be followed in such case.

The ruling of the circuit court holding that the repeal ordinance should be submitted to a vote of the people was affirmed.

After pointing out that the question whether an authority should exist in the City was one of broad public policy upon which the voters ought to have a right to speak if the ordinance permits the same, the court said: "Without determining whether Section 11 the charter provision was intended to cover legislative action of the council rather than its administrative functions, we are of the opinion that the resolution and ordinance under which the housing authority of the City of Wheeling proposes to act, are legislative in their character rather than administrative

" . . . We are not passing upon what would be the effect of the repeal of the ordinance of December 27, 1938 "

(NOTE: The proposed repeal ordinance was rejected by popular vote.)

COVENANTS

(Bastendorf v. Arndt, Mich., 287 N.W. 579)

Where restrictions are ambiguous, uncertainties are resolved in favor of the free use of property. Restrictions, like other legal language, should be interpreted to preserve, if possible, the intention of the restrictor as ascertained from the entire instrument.

"The question herein presented is whether the erection by defendant of a building in Windmill Pointe Subdivision, Detroit, to be used for a school of dance and drama, is a violation of a restriction, the pertinent part of which is as follows: 'On all lots fronting on Alter road . . . no building shall be erected on any lots, except a single house, a double house, or a duplex flat . . . Schools and churches or other public buildings may be constructed on lots number 133 to 174, both inclusive, in which case the restrictions in this paragraph do not apply.'"

Defendant has been giving instruction in dancing and dramatic art in the basement of her present home a short distance from the proper-

ty involved in this suit. She proposes to erect a building on lots numbered 159 and 160, facing Alter Road, which is to resemble a residence in appearance but which will be used only incidentally for residence purposes and primarily for the operation of the school. Defendant's present activities are not now objectionable nor is it claimed that the use of the proposed building for school purposes would be "objectionable in and of itself". Plaintiffs, who are neighboring lot-owners, contend that the operation of a private school for profit is not comprehended within the exception, "schools and churches or other public buildings", and would be a plain violation of the restriction.

Defendant was permitted to go ahead with construction of the building and plaintiffs appealed. In affirming the decision of the lower court the Supreme Court said: "There is no serious question that defendant is conducting a 'school'. The word is a generic one, and where not affected by its context, means little more than an institution with educational purposes or activities. Although defendant is teaching for profit, she is engaged in the promotion of a particular branch of knowledge. . . . Plaintiffs contend, rather, that in the phrase 'schools and churches or other public buildings', 'schools' must be read as modified by 'public', thus excluding from the exception to the restriction institutions which are concededly private in nature. It is sufficient to say that this construction of the language is not inescapable. There is room for doubt . . . It is not unreasonable to interpret 'other public buildings' as constituting a distinct and third class of enumerated structures rather than as a descriptive limitation on 'schools and churches'. Where restrictions are ambiguous, it is axiomatic that uncertainties are resolved in favor of the free use of property. *Kelly v. Carpenter*, 245 Mich. 406, 222 N.W. 714; *Phillips v. Lawler*, 259 Mich. 567, 244 N.W. 165.

"In so holding, we do not lose sight of the recognized principle that restrictions, like other legal language, should be interpreted to preserve, if possible, the intention of the restrictor as ascertained from the entire instrument. Examination of the restrictions and the nature of the subdivision itself does not indicate with any reasonable certainty, however, that prohibition of a school, such as defendant proposes to conduct, was ever contemplated . . . If the plat-tors intended to distinguish between public and private schools or instruction conducted with and without direct profit to the instructor, that intention should have been manifest in terms admitting no contrary inferences."

COVENANTS - ACQUIESCENCE IN VIOLATION(Michiana Shores Estates, Inc. et al v. Robbins, et al.Mich. _____, 287 N.W. 547)

The erection of a dwelling house for two or more families is a violation of the language of deeds, limiting structures to one residence only, and that prohibition bars the occupancy of a house by more than one family. Mere tolerance of unlawful use of a building in violation of building restrictions is not ordinarily a sufficient basis for estoppel.

Plaintiff sought to enforce certain restrictions on lots located in a subdivision known as Michiana Shores. The two lots are situated near the Michigan-Indiana border in a subdivision which was designed for high-grade summer homes. The deeds to both lots contained restrictive covenants, including the following: "One residence only shall be erected on each lot." The trial court found a violation of the restriction and enjoined further occupancy of the two houses on the respective lots by more than one family.

Defendants on this appeal concede the fact that the erection of a dwelling house for two or more families must be held a violation of the language of the deeds limiting structures to "one residence only". Also that the erection of the building bars its occupancy and use by more than one family. It is admitted that two or more families have occupied the dwelling and the chief issue presented is whether the restriction is still in force and effect, or whether the plaintiff is estopped by acquiescence from challenging the violations.

From the facts of the case it appears that a pink stucco dwelling house was begun on the property under the supervision of one of the defendants. "It was two stories in height, attractive in appearance, and in every way appeared from the exterior as if designed for use by a single family. As to the interior, the evidence is somewhat conflicting whether it was apparent on casual inspection that the electrical wiring, plumbing, kitchen and bathroom facilities, etc., had been designed to enable more than one family to occupy the house. Zeplovitz testified that from the beginning the house was designed for double occupancy and that separate plumbing, kitchens and bathrooms were constructed according to the original plan, nothing being changed after completion . . ."

The President of the plaintiff company, until his death, had visited the house while under construction. He had not visited the house, however, from the time the first floor was commenced until after its completion.

The court said that "No circumstance or mitigating factor is disclosed which makes the action of defendants in erecting the dwelling anything more than a bald defiance of the restriction. As we said in *Burns v. Terzian*, 233 Mich. 627, 207 N.W. 913, 914: 'Having knowingly violated the restrictions without any reason to suppose that the plaintiffs were consenting thereto, they [defendants] cannot now equitably complain that they were allowed to progress so far with the construction before being enjoined. *McNair v. Raymond*, 215 Mich. 632, 184 N.W. 412'."

The evidence is very strong that the house was originally designed for one family. There was only one electric meter installed and the plumbing installed was for only one family although the pipes were extended to the second floor and then plastered over. However, for about a period of four years alterations were made to equip the house for occupancy by more persons. A door and two windows were the first outward indication that the house was being changed. During most of the entire period that the house was occupied it was used by two or more families.

Defendant's claim of acquiescence is predicated chiefly upon the admission of Mr. Mathias, who became plaintiff's president in 1937, that both he and the former president knew of the violation of the restriction. As to this the court said: "As the trial court pointed out in his opinion, mere tolerance of unlawful use of a building is not normally a sufficient basis for estoppel." The court went on to say that " . . . There is positive evidence, moreover, that defendants were warned of their violation and threatened with legal action as early as 1935. They themselves admit such discussions took place in 1936. The circuit judge found that defendants had not sustained the burden of proving affirmatively that plaintiff or its agents had knowledge of the violation at such a date that failure to begin suit immediately precluded enforcement of the right. With that conclusion we agree. The fact that plaintiff adopted a conciliatory attitude and resorted to the courts only as a last resort was rather to appellants' advantage than to their prejudice. The injunction is here sought to enforce a 'strict legal right' derived from the language of the deeds, and 'mere delay and acquiescence' will not defeat the right itself where there is nothing to show detrimental change of position by reason of the delay. *Longton v. Stedman*, 182 Mich. 405, 415, 148 N.W. 738. Where defendants conceal their violation of a restriction, they must not be surprised that their violation is not immediately discovered. And, when, by their own promises, denials and excuses they seek to avoid a determination of the problem they themselves have created, they have no cause to complain that too much time has elapsed since the discovery of the violation. Appellants' conduct neither recommends itself to the conscience of the court nor provides any reasonable basis for invoking principles of acquiescence and estoppel. The easily distinguishable cases cited by

appellants do not point in a different direction. It should be noted that acquiescence by conduct to the erection or long use of building for nonresidential purposes on property which has been restricted to residential use, is not analogous to reasonable delay in objecting to the occupancy of a single dwelling by two or more families in violation of a restriction. The law is not unmindful of such distinguishing factors as the difficulty and likelihood of discovering the violation, the questionable permanency of the violation, the resulting degree of injury to surrounding property values, and the like."

COVENANTS - RESCISSION OF SALE

(Carrie M. Morris, et al v. HOLC, District Court, Cameron County, Texas.)

In suit against HOLC by purchaser to rescind sale of realty for alleged misrepresentations in negotiations leading to sale, upon finding of jury that no misrepresentations had been made, the sale was affirmed and judgment rendered in favor of HOLC on note for balance of purchase price, and ordering foreclosure of deed of trust securing the note.

HOLC sold a house and lot in San Benito, Texas, to Mrs. Carrie M. Morris for \$3,750, of which \$562.50 was paid in cash and the balance, \$3,187.50 was represented by a note secured by deed of trust on the property. Shortly after the sale, Mrs. Morris instituted suit against HOLC to rescind the sale and to recover the \$562.50 and \$2,445.00 damages. Her contention was that the approved broker and the contract broker who represented HOLC in negotiating and effecting the sale had misrepresented to her that there were no restrictions preventing the use of the property for the conduct of a funeral parlor therein when in fact there were such restrictions. HOLC filed an answer denying that any such representations had been made to Mrs. Morris, and a cross-bill seeking a judgment on the \$3,187.50 note and foreclosure of the deed of trust securing the same.

At the trial, the jury having found that neither the approved broker nor the contract broker had represented to Mrs. Morris that there were no restrictions against the use of the property as a funeral parlor, the court dismissed Mrs. Morris' suit at her cost and entered judgment in favor of HOLC on the \$3,187.50 note and ordered a foreclosure of the deed of trust securing the same.

REFORMATION OF DEEDS

(HOLC v. The Bank of Arizona, Supreme Court of Arizona.

Case decided in October 1939)

In suit to require exchange of deeds to correct a mutual mistake, the court has the power to require the plaintiff to do justice, even to the extent of conveying additional land.

The Bank of Arizona sued HOLC to require it to convey Lot 33 to the bank in exchange for Lot 37 on the ground that when the bank conveyed Lot 37 to Alatorre who mortgaged it to HOLC, which mortgage HOLC foreclosed and at the foreclosure sale bid in the property, it was the intention of the bank, Alatorre and HOLC that Lot 33, instead of Lot 37, should be conveyed and mortgaged. The bank carried the burden of proving the mutual mistake of all three parties, but a question grew out of the fact that the house on Lot 33 extended over six feet onto Lot 34 which was also owned by the bank. In passing upon this question the Supreme Court of Arizona said:

"The decree is that the bank convey to appellant Lot 33 and the southerly six feet of Lot 34 along the side of and adjoining said Lot 33. It is contended by appellant that the court had no jurisdiction to enter such decree for the reason that the six feet of Lot 34 was not an issue of the pleadings. The evidence shows that the Alatorre home extends over six feet onto Lot 34. It also shows that it was the intention of the parties to save to Alatorre his home place and that to do that it was necessary to pass to him the title to such six feet. The appellee, at the opening of the trial, orally enlarged its tender of deed to include such six feet so that the grantee would have 'full and complete title to the ground and premises of the Alatorre home'. The court certainly had the right to require appellee to do justice as a condition to any relief granted it, and when it was discovered that the Alatorre home covered not only Lot 33 but extended over onto Lot 34, the Court had the power, and it was its duty, to require the bank to convey such portion of Lot 34 to the successor of Alatorre."

EMINENT DOMAIN

(In re Parkside Housing Project: City of Detroit v. Vandenberg, et al Mich. _____, 287 N.W. 571)

In condemnation proceedings under provisions of city charter, practice respecting admission of testimony should be as simple as a due regard to substantial justice would permit. Large discretion is left to jury or to rulings of attending officer.

This suit involved a condemnation proceeding for the purpose of establishing the necessity for use of, and compensation to be paid for, land sought by the City of Detroit for a housing project. From a verdict of the jury and judgment thereon, the landowners appealed, alleging that the court erred in refusing to admit into evidence a so-called option between the Detroit Housing Commission and the owners of the land, and that a fair trial had been denied because of prejudicial comments and conduct of the trial judge.

In remanding the case for a new trial the Supreme Court held that there had been prejudicial error on the part of the trial judge, and:

1. Where options to purchase, obtained by the Commission which had no authority to bind the city and which the city had rejected, were based upon the aggregate value of several distinct parcels of land as a unit, exclusion of such options offered as evidence of value was not error when the parties had agreed to the value of each parcel taken separately as the criterion of value.

2. In condemnation proceedings under provisions of the city charter the judge attends the jury, decides questions of law and administers oaths to witnesses, but his functions must, at most, be advisory.

3. In such proceedings, under the city charter, the jury, according to the principles of common law, is a judge of law and fact and its conclusion is not limited to testimony at the trial.

The court concluded its opinion with this statement: "In such a proceeding for the condemnation of land for a broad public purpose in the interest of the general welfare of the community, it is regrettable that this case must be sent back for retrial with the attendant delay resulting therefrom. But it would be more regrettable if citizens were denied a fair trial and an adjudication of their rights, thereby suffering property losses through prejudice and disparagement in our courts."

LANDLORD AND TENANT - HOUSING OCCUPANCY PERMITS

(Barsky v. Litwin, Mich. , 287 N.W. 339)

Where tenant refused to pay rent because landlord failed to procure an occupancy permit required by the housing law, tenant's use and occupation whether under lease for stated period or not was void ab initio and he could not

make defense of partial eviction in justification of his remaining in possession.

Defendant rented an apartment in a building, and after paying rent for a time refused to make further payments and, upon notice to quit, continued in possession, claiming that failure of plaintiff to procure an occupancy permit, required by the so-called housing law, Comp. Laws, 1929, Sections 2487, 2588, Stat. Ann. Sections 5.2871 and 5.2872, rendered him immune from dispossessionary procedure.

The plaintiff brought a summary proceeding before a circuit court commissioner to evict defendant. The defendant invoked the above statute and also claimed that failure of plaintiff to furnish heat and dishes and to keep the premises free from vermin constituted a partial eviction. The commissioner so held and dismissed the case.

Plaintiff appealed to the circuit court "and the judge held that, if the housing act provisions permitted defendant to occupy the apartment without payment of rent, by rendering him immune from dispossessionary procedure, it was unconstitutional and the failure, if any, of the plaintiff to furnish heat and dishes and to exterminate vermin did not constitute an eviction, available as a ground for remaining in possession and so directed the commissioner." Defendant appealed.

In holding that the language of section 2588 of the statute did not bar an eviction the court said: "The language of sec. 2588, unless reframed or words added thereto, does not bar the eviction of defendant. As enacted it relates to actions to recover payment for use and occupation. The provision that: 'during such unlawful occupation no rent shall be recoverable by the owner or lessee of such premises for said period, and no action or special proceedings shall be maintained therefor or payment of such for possession of said premises for non rent,' relates to actions to collect rent for use and occupation forbidden by law. This is not such an action or proceeding and it would be absurd to hold, in the face of the concluding provision of the same section, reading: 'and said premises shall be deemed unfit for human habitation and the health officer may cause them to be vacated accordingly', that the landlord is barred from obtaining the possession incident to his title and must leave the tenant in possession while he, the landlord, incurs added penalty or possible imprisonment for each day the tenant remains, as provided in the next section. Comp. Laws 1929, Sec. 2589, Stat. Ann. Sec. 5.2873.

"Unless and until the statute expresses in clear and unmistakable language that, in an instance like the case at bar, the tenant is immune from dispossessionary procedure, authorized by other statutes,

when brought by the landlord, we have no occasion to pass on the validity thereof. In considering the case we pass no opinion on the validity of the act, holding that it does not support the contention of defendant."

The court further held that there was no partial eviction as stated by the defendant because "the tenant's use and occupation, whether under lease for a stated period or not, was void, ab initio, under the statute and he cannot make the defense of partial eviction in justification of his remaining in possession."

LANDLORD AND TENANT - RELATIONSHIP UPON FORECLOSURE

(Jones, et al v. HOLC, Supreme Court of Georgia, 4 S.E. (2) 146.)

Dispossessory proceeding. Tenant cannot dispute landlord's title, nor inject issues not germane to that involved in the proceeding.

HOLC, after foreclosing and becoming owner of the property involved, sued out a dispossessory warrant against its tenant, Mary Jones, because of her failure to pay rent. Her sister, Emma Jones, as her next friend, and as next friend of her mother, Mrs. C. A. Jones, filed a counter-affidavit setting up that Mary Jones and Mrs. C. A. Jones were of unsound mind and that Mrs. C. A. Jones was of unsound mind at the time she had executed the deed of trust to HOLC which it had foreclosed. She sought not only to defeat the dispossessory proceeding but to have Mrs. C. A. Jones made a party to the proceeding and to have the foreclosure cancelled and the title declared in Mrs. C. A. Jones. Pending the suit Mrs. C. A. Jones died and by amendment her heirs at law were sought to be made parties in her stead. HOLC, by demurrer and motion to strike, raised the question that the counter-affidavit set forth no cause of action and no equity, that Mary Jones had a full and complete remedy at law prescribed by statute, that there was a misjoinder of parties and of defenses, that Mary Jones could not dispute her landlord's title, and that no statutory bond had been given as required by law. The court sustained the demurrer and motion and on appeal the Supreme Court of Georgia held:

"Whatever may have been the rights of Mrs. C. A. Jones and her heirs in an equitable proceeding brought for the purpose of removing the clouds on her alleged title by canceling the security deed made by her and the deed executed in pursuance of the power of sale contained therein, so far as this proceeding is concerned it is a statutory dispossessory warrant by one claiming title and against its

tenant, Mary Jones. This being true, in order for the tenant to stay the proceeding, she would have to show that the relation of landlord and tenant between her and the plaintiff did not exist, or that the rent claimed by the landlord was not due and owing, or that his lease or term of rental had not expired. Code, Sec. 61-303. This the counter-affidavit does not do, but seeks to dispute the title of the landlord, which she as tenant is not permitted to do. Code, Sec. 61-107. The proceeding being statutory, the defendant cannot, by counter-affidavit or equitable pleading or amendment, inject an issue which is not germane to that involved in the proceeding. *Patrick v. Cobb*, 122 Ga. 80, 81, 49 S. E. 806; *Hayes v. Hayes*, 137 Ga. 362, 365, 73 S.E. 659. Nor in her attempt to deny the claim by denying her landlord's title does she give the bond required by the statute. This requirement being jurisdictional, its omission would invalidate any defense which she in fact might otherwise have been entitled to interpose. *Hall v. Holmes*, 42 Ga. 179, 182; *Cherry v. Ware*, 33 Ga. 289 (1); *Carlton v. Hibernia Savings Building & Loan Association*, 185 Ga. 425 (2), 195 S.E. 764, and cit. Accordingly, the court did not err in dismissing on demurrer the counter-affidavit together with the intervention, filed not as an independent equitable proceeding, but embodied in one pleading as a part of the defense set up by the counter-affidavit."

LIENS

(*HOLC v. V. B. Netterville, et al*, Supreme Court of Texas, Commission of Appeals, Section A. October 1939)

Effect of possession of realty by claimant of equitable title held nullified by acts of record, showing ownership in another.

On October 10, 1925, Edwards conveyed to O. B. Netterville land fronting 332 feet on Pine Boulevard. The deed recited a cash payment by O. B. Netterville of \$80, and the execution by him of a note for \$320, payable in monthly installments of \$8.00 each. This deed was recorded October 15, 1925. Shortly thereafter, V. B. Netterville, father of O. B. Netterville, built a house on the land and thereafter lived in it with his wife, occupying it as his home.

V. B. Netterville then built another house on the land, this one for O. B. Netterville, who lived in it with his wife. For building the second house, O. B. Netterville executed a note for \$1,580 to V. B. Netterville. This note was payable in monthly installments of \$24 each and included a balance of \$282.36 of the original purchase money note. On April 19, 1926, V. B. Netterville assigned the note to the Carter Lumber Company which had furnished the lumber and materials for the

second house. The note was secured by a mechanic's, materialman's and contractor's lien on all the land and V. B. Netterville also assigned this lien to the Carter Lumber Company. This note was paid in full and on November 28, 1932, the Carter Lumber Company released the lien.

In December 1929, at the request of V. B. Netterville, O. B. Netterville conveyed to C. K. Netterville (son of V. B. and brother of O. B.) about half of the land, including the land upon which stood the first house that was built, i.e., the one occupied by V. B. Netterville and wife, but not including the land upon which stood the O. B. Netterville home. This deed was recorded December 29, 1929. V. B. Netterville constructed a house for C. K. Netterville on this land, purchasing lumber and materials for the purpose from the Carter Lumber Company. To pay for the construction of the house, C. K. Netterville executed to V. B. Netterville his note, secured by a mechanic's, materialman's and contractor's lien, for \$1,860, payable in monthly installments of \$24 each, and B. V. Netterville assigned said note and lien to the Carter Lumber Company. To better secure the note, C. K. Netterville executed a deed of trust lien in favor of the Carter Lumber Company. This lien covered the land upon which stood the first house constructed and in which V. B. Netterville and his wife lived and also the last house constructed and into which C. K. Netterville and his wife moved in January 1930.

C. K. Netterville defaulted in the monthly payments on the \$1,860 note that he had given and on June 6, 1933, the trustee, at the request of the Carter Lumber Company, made sale of the land covered by the deed of trust lien securing the same, and the Lumber Company became the purchaser. This sale of course included the land upon which stood both the house occupied by V. B. Netterville and wife and the house occupied by C. K. Netterville and wife, although both families continued to reside in the houses after the sale.

Upon application of C. K. Netterville and wife, HOLC redeemed or recovered the land from the Carter Lumber Company which, on February 1, 1934, conveyed it to C. K. Netterville who mortgaged it to HOLC to secure the loan. Thereafter, V. B. Netterville and wife sued C. K. Netterville and wife and HOLC, seeking to recover that part of the land upon which stood the V. B. Netterville house. They relied upon an equitable title and claimed that when the land was originally purchased by O. B. Netterville it was purchased for the joint benefit of O. B. Netterville and V. B. Netterville and that V. B. Netterville paid the \$80 cash payment and some of the monthly payments on the note executed by O. B. Netterville to the Carter Lumber Company which included the original purchase money note executed by O. B. Netterville. They further claimed that although the record title stood in the names of O. B. Netterville and C. K. Netterville, yet their possession and residence

in the V. B. Netterville house was sufficient to put HOLC upon inquiry, which, if pursued, would have disclosed their equitable interest arising by virtue of payment of a part of the purchase money.

The Supreme Court of Texas, in holding against V. B. Netterville and wife and in favor of HOLC, said: "Plaintiff V. B. Netterville allowed C. K. Netterville to place a lien upon the land in which he now claims an interest. This was not only done with his knowledge and consent but with his active participation, in that he again took the mechanic's materialman's and contractor's lien in his own name and assigned it to the Lumber Co., thus vouching for its validity and genuineness. He then stood by and allowed a public sale to be made of all the property under the deed of trust. Then without protest he allowed the son to repurchase the land, execute vendor's lien upon same to secure payment of the purchase money, and knowingly allowed such lien to pass into the hands of the Home Owners' Loan Corporation unchallenged. In light of these acts, on the facts of the record, plaintiffs are in no position to say that defendants should not have believed and relied upon all these record declarations, but should have made inquiry to ascertain whether or not they (plaintiffs) had paid some of the original purchase money for the land . . . The acts of V. B. Netterville, as disclosed by the record, were such as to nullify the effect of possession as regards the question of notice. The homestead rested solely upon an equitable claim, dependent upon a resulting trust. The claim of the wife was swept away by the acts of the husband."

MECHANIC'S LIEN - ENFORCEMENT

(Edward C. Nelson v. Pauline Juron and HOLC, Circuit Court, Cook County, Illinois. Decided October 1939.)

Failure to procure permit from Commissioner of Buildings of City of Chicago, as required by ordinance, bars right to enforce mechanic's lien.

In a suit against a borrower-mortgagor of HOLC and HOLC to foreclose an alleged mechanic's lien, the answer of the defendants set up, among other things, that plaintiff had done the work without a permit from the Commissioner of Buildings of the City of Chicago in accordance with an ordinance of the City of Chicago which provided as follows:

"Before proceeding with the erection, enlargement, alteration, repair or removal of any building or structure in the city, a permit for such erection, enlargement, alteration, repair or removal shall first be obtained by the owner or his agent from the Commissioner of Buildings,

and it shall be unlawful to proceed with the erection, enlargement, alteration, repair or removal of any building, or of any structural part thereof within the city, unless such permit shall first have been obtained from the Commissioner of Buildings."

Plaintiff filed no replication to this part of the defendants' answer, which therefore stood admitted under the Practice Act of Illinois, and in fact stipulated at the hearing before the Master that no permit had been issued for the work.

In his report, which was confirmed by the court, the Master found and ruled as follows: "In a similar situation in the case of H. Bairstow, et al, Appellees v. Northwestern University, et al, Appellants, 287 Ill. App. Ct. Reps. Page 424, the Court held that no recovery could be had either by way of mechanic's lien or otherwise where construction or alteration work on a building was performed without securing a permit from the proper authorities in accordance with a City Ordinance. In connection with the above matters, I therefore find as follows:

"1. The plaintiff by failing to file a replication to the new matters set up in defendants' answer admitted the same for all purposes.

"2. The performance of the work and rendering of labor and materials as described in plaintiff's complaint without a permit from the Commissioner of Buildings of the City of Chicago as required by City Ordinance was unlawful and bars plaintiff's claim herein."

MORTGAGES - MORATORIA

(Chicory v. Industrial Development Co., _____ Mich. _____, 287 N.W. 337)

Where purchaser, who defaulted in payment for realty, obtained moratorium relief and stay of writ of restitution, but did not appeal from judgment of custer, she could not, after moratorium delay was removed, and without having paid amount due vendor or without having redeemed during moratorium immunity, have specific performance of the land contract.

Plaintiff purchased a lot from the defendant at a price of \$1,870 and made a down payment of \$187 agreeing to pay the balance in monthly installments of \$18.70. She failed to make the payments and on June 28, 1933, in a summary proceeding before a circuit court commissioner, judgment of custer was entered and on October 9, 1933, writ of restitution issued. No appeal was taken from that judgment but on

November 10, 1933, plaintiff joined with her husband in asking for moratorium relief and obtained stay of the writ of restitution, and at each legislative extension of the power to grant such relief it was invoked and granted until the power in such a case as this ended on November 1, 1938. This left the judgment of ouster fully operative.

The plaintiffs then obtained an extension of two weeks in which to pay the amount due. No payment was made and a writ of restitution again was issued. Plaintiffs then filed the bill herein for specific performance of the land contract, recorded a lis pendens and, seven days later, filed an amended bill, alleging a tender of \$209.94 in full payment of the contract. The tender was found insufficient and the bill dismissed.

The court in holding that the judgment of ouster was still in full force and denying the suit for specific performance said: "The judgment of ouster, entered in 1933, is in full force and, now the moratorium delay being removed, plaintiffs are bound thereby and cannot, with such adjudication standing against them, have specific performance of the land contract.

"Failure to appeal from the judgment of ouster or restore the contract by payment of the amount adjudged then due, as provided by statute, followed by failure to redeem while enjoying moratorium immunity from ouster bars suit for specific performance."

MORTGAGES - FORECLOSURE - PROCEDURE

(HOLC v. Elizabeth C. Hackenberg, et al, Court of Appeals of Cuyahoga County, Ohio. Decided in October 1939)

Time of advertisements of foreclosure sales in Ohio.

In an HOLC foreclosure suit in Ohio in which HOLC bid in the property at the foreclosure sale, the defendant moved to withhold confirmation of the sale and to vacate the sale because 36 days had not elapsed between the first publication of the notice of sale and the day of the sale, although there had been five weekly publications and more than 30 days had elapsed between the first publication and the day of the sale. Secs. 11681 and 11682 of the Ohio Code are as follows:

"11681. Notice of time and place.- Lands and tenements taken in execution shall not be sold until the officer causes public notice to be given of the time and place of sale, for at least thirty days before the day of sale, by advertisement in a newspaper printed and of general circulation in the county

"11682. In what papers; how long.- When such advertisement is

made in a newspaper published weekly, it shall be sufficient to insert it in five consecutive numbers. If there is both a daily and weekly edition of the paper selected . . . it will be sufficient to publish the advertisement in the daily once a week, for five consecutive weeks before the day of sale, each insertion to be on the same day of the week."

The contention of the defendant that 36 days had to elapse was based on the last sentence of Section 11682 and particularly upon the position of the commas after the words "week" and "sale". Evidently on the authority of *Hagerman v. Ohio Bldg. & Savings Association*, 25 O.S. 186, and *Wilson v. Scott*, 29 O.S. 636, this contention of the defendant was overruled by both the Court of Common Pleas and the Court of Appeals.

MORTGAGES - FORECLOSURE - PROCEDURE

(*John McConnell and Netta McConnell v. HOLC and Grant Rebold and Katherine Rebold v. HOLC*, Supreme Court of Oklahoma. Decided October 1939.)

In Oklahoma, parties cannot by one appeal upon one petition in error and one case-made, have two or more separate foreclosure judgments reviewed by the Supreme Court. Such attempted appeal will be dismissed for duplicity.

On October 28, 1938, the District Court of Okmulgee County, Oklahoma, entered judgment for HOLC against McConnell and ordered foreclosure on certain real estate. On November 15, 1938, motion for new trial was overruled. On November 10, 1938, the same court entered judgment for HOLC in foreclosure against Rebold on a separate and distinct tract of real estate having no connection with the real estate involved in the foreclosure against McConnell. No order overruling motion for new trial was entered.

McConnell and Rebold sought to have the Supreme Court of Oklahoma review both judgments on a single petition in error and on only one case-made. HOLC moved the Supreme Court to dismiss the appeal because duplicitous. In sustaining the motion of HOLC, the Supreme Court said:

"In *Harper v. Stumpff*, 84 Okla. 187, 203 Pac. 194, we said: 'Where the parties have undertaken, by one appeal upon one petition in error and one case-made, to reverse two or more judgments, this court will dismiss such an attempted appeal for duplicity.'

MORTGAGES - SECOND TRUST DEEDS UNDER HOLC

(Woods v. Kern County Mutual Bldg. & Loan Assoc. et al, District Court of Appeal, Fourth District, California, 93 P. 2d 837)

A building and loan association's action, in taking a second deed of trust and grant deed as security from mortgagor for balance of indebtedness, after it had accepted bonds in less amount than mortgage debt from HOLC in full settlement of association's claim against mortgaged property, was illegal and void. The fact that mortgagor took part in the transaction did not make mortgagor in pari delicto, so as to preclude cancellation of second trust deed, where the mortgagor was allegedly induced to take part in the transaction by fraud and misrepresentation.

The plaintiff in this case sought to recover a judgment cancelling a trust deed, for the return of two stock certificates, and for the cancellation of a grant deed upon the grounds that these instruments had been obtained by the defendants without consideration and in violation of the HOLC Act of 1933. A demurrer to a second amended complaint was sustained without leave to amend and the plaintiff appealed the judgment thereafter entered, which judgment was reversed on the appeal.

It appears that the appellant executed and delivered to respondents a note for \$3,000 secured by a trust deed covering certain real property. In October 1933 she applied at suggestion of respondents to the HOLC for a loan in order to pay and discharge the aforesaid indebtedness. In May 1934, the respondents, by written agreement, consented to accept the sum of \$2,334 in HOLC bonds with \$25 in cash and to release their claim. However, in January 1934, the respondents had falsely and fraudulently stated to appellant that in order for her to execute and deliver to them a note for \$500 secured by a second trust deed on the same property, to assign and transfer to respondents two described certificates of stock of the face value of \$100 each, and to deliver a grant deed for her one-third interest in certain other real property. It was explained that this was done in order to secure the balance of the original loan and that the said grant deed would be recorded upon her failure to make the monthly payments upon the \$700 second trust deed.

The appellant, being a woman of little business experience, relied upon the above statements and executed the above mentioned instruments. In January 1937, she learned for the first time that the statements made to her by respondents were false, and in April 1937 she demanded that the respondents return to her the various documents and

evidence of title she had delivered to them. This was refused.

It might be said here that respondents, in receiving the bonds from the HOLC accepted the same in full discharge of their claim. They contend that the complaint states no cause of action since it states that the execution of the trust deed, etc., was obtained by fraud whereas it appears that the misrepresentations complained of were misrepresentations of law and not of fact and for that reason no damage was suffered since the original debt was not increased. They also argue that it was not illegal and against public policy and that the HOLC did not expressly forbid the taking of second liens securing the difference between the face value of the bonds to be accepted under the terms of the act and the balance of the original indebtedness, and that no regulation concerning the taking of such a second lien was made by the HOLC until September 1934, after the transactions here in question, at which time a regulation was adopted providing that no loan would be made where a separate understanding or agreement calling for any payments other than those required by the Corporation was made between the debtor and the original creditor.

In holding that the transaction was void the court cited the case of *McAllister v. Drapeau*, Cal. Sup., 92 P. (2d) 911, 915, which involved the same principle as this case, and quoted this part of that opinion: "The rules and regulations contemplated that under some circumstances it would be to the interest of the home owner to give a second mortgage to the creditor to secure a part of the refunded debt, but such rules and regulations provided that the H.O.L.C. would not refund the first mortgage if the creditor demanded a second unless the financial ability of the debtor and the financial arrangements were such that the debtor would have a reasonable opportunity to pay off both mortgages. Obviously, before these facts could be ascertained, a full disclosure of the amount and the terms of the proposed second lien would have to be made to the H.O.L.C. The securing of a second lien by the creditor without such disclosure is clearly in violation of the letter and spirit of the statute and regulations. This is demonstrated not only by the terms of the statute and the regulations, but also by the language of the agreement above quoted that all creditors were required to sign wherein the creditor represented and agreed that he was accepting the bonds 'in full settlement of the claim of the undersigned'."

The court then went on to say: "In that case it appeared that the HOLC had no notice or knowledge of the existence of the second trust deed given to secure the balance of the original debt remaining after the acceptance of the Home Owners' Loan bonds. The court held that such a second lien to secure this balance was not permitted under the act, and the regulations adopted, unless a full disclosure of the

amount and terms thereof was made to the HOLC, in order to enable it to determine the effect of such a second lien upon the Home Owners' loan. It was held that the consent agreement signed by the original creditor, which was practically identical with the one attached to the complaint in this case, constituted a valid release and an accord and satisfaction and that the second lien which was taken was void as in violation of the public policy expressed in the act.

"Under the authority just referred to it must be held that the transaction involved in the instant case was illegal and void. While this complaint was not a model in all respects it was sufficient to state a cause of action . . . "

The other points taken up by the court as to the merits of this appeal need not be discussed here.

TAXATION OF GOVERNMENT AGENCY

(Pittman v. HOLC, ___ Supt. Ct. ___. Decided November 6, 1939)

The HOLC does not have to pay a tax imposed by the State of Maryland for the recording of mortgages. The creation of the HOLC was a constitutional exercise of the congressional power and the activities of the Corporation through which the National Government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments.

In a decision rendered by the United States Supreme Court, Chief Justice Hughes rendering the opinion, the court held that the HOLC does not have to pay a tax imposed by the State of Maryland for the recording of mortgages.

This suit was brought by the HOLC "in the Baltimore City Court for a writ of mandamus requiring the Clerk of the Superior Court of Baltimore to record a mortgage executed to the Corporation upon the payment of the ordinary recording charge and without affixing stamps for the state recording tax. Demurrer to the petition was overruled, the Clerk did not avail himself of the opportunity to answer, and mandamus was granted. The order was affirmed by the Court of Appeals ___ Md. ___." Certiorari was granted.

"The Maryland statute imposes a tax upon every mortgage, recorded or offered for record, at the rate of ten cents for each \$100,

or fraction thereof, of the principal amount of the debt secured by the mortgage. As the Home Owners' Loan Corporation is expressly declared to be an instrumentality of the United States (Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128) and the mortgage was acquired in that capacity, the Court of Appeals held the tax as thus applied to be invalid."

The Maryland Court of Appeals relied upon the case of Federal Land Bank v. Crosland, 261 U.S. 374. In that case the question related to a tax imposed by Alabama as a condition for the recording of a mortgage executed by a Federal Land Bank. The Federal Farm Loan Act of 1916 provided that first mortgages executed to Federal Land Banks shall be deemed "instrumentalities of the government of the United States and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation." The United States Supreme Court held that the state tax, as distinguished from a reasonable fee to meet the expenses of the registry, constituted a general tax on mortgages, using the condition attached to registration as a practical mode of collecting it, and that the tax on the mortgage in question was beyond the power of the State.

The petitioner suggested that the Crosland case could be distinguished in that the Alabama tax was imposed on the lender, whereas the Maryland statute is silent as to who shall pay the tax and that the Federal Farm Loan Act expressly declared the mortgages of Federal Land Banks to be instrumentalities of the Federal Government. The Maryland Court of Appeals thought these differences were immaterial.

The Supreme Court in rendering its decision and upholding the judgment of the state court said in part: "The second suggested distinction rests upon the terms of the Home Owners' Loan Act. That provides that the Home Owners' Loan Corporation, its franchise, capital, reserves and surplus, and its loans and income shall be exempt from all state or municipal taxes. The critical term, in the present relation, is 'loans'. We think that this term, in order to carry out the manifest purpose of the broad exemption, should be construed as covering the entire process of lending, the debts which result therefrom and the mortgages given to the Corporation as security. The Home Owners' Loan Act requires that the loans made by the Corporation 'shall be secured by a duly recorded home mortgage'. Both the mortgage and its recordation were indispensable elements in the lending operations authorized by Congress. We agree with the state court that there is no sound distinction which makes inapplicable the reasoning which was decisive in the Crosland case. . . .

"We assume here, as we assumed in *Graves v. New York ex rel. O'Keefe*, that the creation of the Home Owners' Loan Corporation was a

constitutional exercise of the congressional power and that the activities of the Corporation through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments. *McCulloch v. Maryland*, supra, pp 421, 422; *Smith v. Kansas City Title Co.*, 255 U.S. 180, 208, 209; *Graves v. New York ex rel. O'Keefe*, supra. Congress has not only the power to create a corporation to facilitate the performance of governmental functions, but has the power to protect the operations thus validly authorized. 'A power to create implies a power to preserve.' *McCulloch v. Maryland*, supra, p. 426. This power to preserve necessarily comes within the range of the express power conferred upon Congress to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States. Const. Art. I, sec. 8, par. 18. In the exercise of this power to protect the lawful activities of its agencies, Congress has the dominant authority which necessarily inheres in its action within the national field. *The Shreveport Case*, 234 U.S. 342, 351, 352. The exercise of this protective power in relation to state taxation has many illustrations. See, e.g., *Bank v. Supervisors*, 7 Wall. 26, 31; *Choate v. Trapp*, 224 U.S. 665, 668, 669; *Smith v. Kansas City Title Co.*, supra, p. 207; *Trotter v. Tennessee*, 290 U.S. 354, 356; *Lawrence v. Shaw*, 300 U.S. 245, 249. In this instance, Congress has undertaken to safeguard the operations of the Home Owners' Loan Corporation by providing the described immunity. As we have said, we construe this provision as embracing and prohibiting the tax in question. Since Congress had the constitutional authority to enact this provision, it is binding upon this court as the supreme law of the land. Const. Art. VI."

TORTS - LIABILITY OF GOVERNMENT AGENCY

(Prato v. HOLC, Circuit Court of Appeals, First Circuit, 106 Fed. (2d) 128)

HOLC is liable in tort even though it is an agency of the United States. Government's immunity from tort does not extend to its agents or instrumentalities merely because they do its work.

This is an action by plaintiff against the HOLC to recover damages for injuries sustained in a fall on an icy sidewalk in front of premises owned by defendant.

The only question raised as to the liability of the defendant is its immunity from suit for tort on the ground that it is an agency of the United States.

The court in holding that defendant was liable in an action of tort quoted at length from the case of Keifer & Keifer v. Reconstruction Finance Corporation and Regional Agricultural Credit Corporation, 306 U. S. 381, 59 S. Ct. 516, 517, 83 L.Ed. ____ (37 HLD 10), which held defendants, government corporations, liable in tort action. The court in quoting from that case said in part:

"The government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. United States v. Lee, 106 U.S. 196, 213, 221, 1 S.Ct. 240, 254, 261, 27 L.Ed. 171; Sloan Shipyards Corp. v. U. S. Fleet Corp., 258 U.S. 549, 567, 42 S.Ct. 386, 388, 66 L.Ed. 762 . . .

"To give Regional an immunity denied to more than two score corporations, each designed for a purpose of government not relevantly different from that which occasioned the creation of Regional, is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none. A fair judgment of the statute in its entire setting relieves us from making such an imputation of caprice. . .

"Congress has embarked upon a generous policy of consent for suits against the government sounding in tort even where there is no element of contract. It has sanctioned suits for patent infringement, 36 Stat. 851, 35 U.S.C.A. Sec. 68, provided for compensation for the disability or death of a government employee "while in the performance of his duty", 39 Stat. 742, 5 U.S.C.A. Sec. 751 et seq., authorized payment for damage to property by the Army Air Service. 41 Stat. 109.

"These and other public statutes and many private bills were founded on considerations thus generalized in a Report of the Senate Committee on Claims. . . .

"Congress has thus clearly manifested an attitude which serves as a guide to the scope of liability implicit in the general authority it has conferred on governmental corporations to sue and be sued. We should be denying the recent trend of Congressional policy to relieve Regional from liability."

"The defendant in this case being authorized, without qualification, to sue and be sued, it must be held liable in an action of tort."

TORTS - NEGLIGENCE

(Sam Ferrara v. HOLC, Municipal Court, City of New York, Borough of Brooklyn, First District. Decided in October 1939.)

Tenant in two-family dwelling not entitled to recover for fall down stairs when guilty of contributory negligence and landlord had previously repaired stairs in workmanlike manner.

Ferrara, a tenant in a two-family house of HOLC, sued HOLC for \$1,000 damages for personal injuries sustained in a fall down a stairs used in common by both families. His contention was that shortly prior to the accident, HOLC, in making repairs, had placed a stairpad on the top landing but had negligently placed it in a loose and defective manner. The stairpad was introduced in evidence. Its physical appearance showed that it was in good condition and that it had been nailed to the landing by four nails. The contractor and his employees who placed the stairpad testified that it had been properly placed. On cross examination, plaintiff admitted that he had observed several days prior to the accident that the stairpad was loose, that he had done nothing to remedy it, although four nails properly applied would have made it safe and that he had continued to use the stairs.

The verdict in favor of HOLC was upon the ground that there had been no negligence in the placing of the stairpad and that plaintiff had been guilty of negligence in using the stairs.

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

UNITED STATES - SALES OF PROPERTY

(Opinion No. 89 (Vol. 39) of the Attorney General, Aug. 15, 1939.)

The Acting Attorney General, Mr. Samuel O. Clark, Jr., has rendered an opinion which holds that property once acquired by the government may not be sold or title otherwise disposed of except under authority of Congress.

It appears that the Puerto Rico Reconstruction Administration had an aerial map made of the island of Puerto Rico and wanted to sell prints of these maps to individuals and private companies.

In holding that prints of these maps could not be sold to private individuals the Acting Attorney General said: "Since the Constitution (art. 4, sec. 3, cl. 2) gives to the Congress the power 'to dispose of . . . property belonging to the United States', it follows, as stated by Attorney General Stone, that 'property once acquired by the Government may not be sold, or title otherwise disposed of, except under the authority of Congress.' (34 Op. 320, 322.) I find no direct or implied grant of authority to the Reconstruction Administration in any statute for the sale of maps to individuals or private companies . . .

" . . . The contemplated purchasers of the maps are not in any way connected with the Federal or insular governments and they are not qualified recipients of the benefits of a duly authorized project of the Reconstruction Administration. While the nature of the projects now being administered is not stated, it does not appear that the sale of prints of the aerial map to individuals or private companies in the Island of Puerto Rico would be in any way connected with, incidental to, or necessary for the prosecution of any authorized project. In my opinion, the power to administer useful projects does not include, by reasonable implication, authority to dispose of Government property under the circumstances stated. . . .

"It is stated that no prints of the map will be made until orders therefor are received. Such prints would not, therefore, be produced or made available by any project, within the further provision of the revolving fund act authorizing 'a reasonable charge . . . for materials and ser-

vices produced or made available by any project.' It is also clear, as pointed out by the General Counsel of the Administration, that such prints would not be made for the use of the Administration and hence could not properly be disposed of as surplus property or property no longer needed by the Administration."

Other rules, regulations and administrative orders affecting housing construction or finance agencies are as follows:

U. S. CIVIL SERVICE COMMISSION published a notice of the condition of the apportionment as of September 30, 1939. See 4 Fed. Reg. 4180-4181.

Published a notice of the condition of the apportionment as of the close of business Saturday, October 14, 1939. See 4 Fed. Reg. 4314.

FEDERAL HOUSING ADMINISTRATION: The Acting Administrator with the approval of the Acting Secretary of the Treasury published a notice, filed September 30, calling for redemption of certain specified debentures of 2 3/4% Mutual Mortgage Insurance Fund debentures, Series B. See 4 Fed. Reg. 4129.

FEDERAL HOME LOAN BANK BOARD: The FHLBB by resolution filed October 19 repealed part 100 of the Rules of Practice and Procedure for the HLBSysstem. See 4 Fed. Reg. 4300.

The FHLBB by resolution filed October 19 amended the Rules and Regulations of the FHLBSysstem with regard to the procedure for removal of a member. See 4 Fed. Reg. 4301.

The FHLBB by resolution filed October 24 amended the Rules and Regulations for the FHLBSysstem with regard to prohibiting bank officers, employees or counsel from representing or acting in behalf of an insured institution. See 4 Fed. Reg. 4374.

Federal Savings & Loan Insurance Corporation: The Board of Trustees of the FSLIC by resolutions filed October 19 (1) rescinded its approval of part 100 of the Rules of Practice and Procedure of the FHLBSysstem, and (2) amended the Rules and Regulations for insurance of accounts with re-

gard to the procedure for terminating said insurance. See 4 Fed. Reg. 4301.

RURAL ELECTRIFICATION ADMINISTRATION: The Administrator published a notice, filed October 7, setting forth the allocations of funds for projects under Sections 4 and 5 of the Rural Electrification Act of 1936. See 4 Fed. Reg. 4204-5.

UNITED STATES HOUSING AUTHORITY: The Administrator by regulations filed September 30, (1) prescribed a procedure and offered suggestions for the submission of drawings and specifications, and (2) laid down requirements for site engineering designs. See 4 Fed. Reg. 4112-4117.

The Administrator by regulations filed October 3 prescribed requirements relating to development costs of a low-rent housing project and USHA participation therein. See 4 Fed. Reg. 4133-4136.

The Administrator by regulations filed October 12 prescribed personnel requirements for the supervision and inspection of projects during the period of construction. See 4 Fed. Reg. 4242-4243.

The Administrator by a bulletin filed October 21 prescribed a procedure for the temporary relocation of slum occupants during the construction of a housing project. See 4 Fed. Reg. 4323.

The Administrator by a bulletin filed October 23 set forth the factors and principles to be considered in planning and developing the site of a project. See 4 Fed. Reg. 4323-4332.

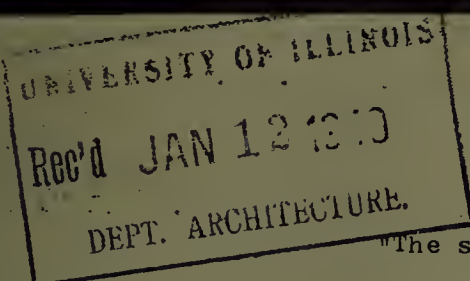
The Administrator by a bulletin filed October 24 prescribed a procedure for the guidance of local housing authorities in the matter of selecting tenants and determining their eligibility for admission to a project. See 4 Fed. Reg. 4359-4364.

The Administrator by regulations filed October 27 prescribed procedures (1) for initiating a low-cost housing project, and (2) for the selection and qualifications of architects. See 4 Fed. Reg. 4393-4398.

· HOUSING · LEGAL DIGEST

NUMBER 65

DECEMBER 1939



"The service requirements and characteristics of low rent housing and slum clearance projects fit into the pattern supplied by the courts in justifying special rate classifications for utility loads."

SEPARATE UTILITY RATE
CLASSIFICATIONS FOR SLUM CLEARANCE PROJECTS

(See LEGAL COMMENT, page 35.)

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

HOUSING LEGAL DIGEST

Issued Monthly by
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The Central Housing Committee
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The Editors of the HOUSING LEGAL DIGEST endeavor to present as completely and impartially as possible material relating to housing legal problems: but they assume no responsibility for opinions expressed herein and no inference may be drawn as to their agreement or disagreement with viewpoints expressed.

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DECISIONS

CONSTITUTIONAL LAW - HOUSING AUTHORITY

(Allydom Realty Corporation and others v. Holyoke Housing Authority, Opinion decided November 21, 1939.)

This case involved a complaint by a realty company and ten individual taxpayers to restrain the City of Holyoke from expending money under a cooperative agreement entered into with the Holyoke Housing Authority in connection with the construction of a low-rent housing project. The specific question submitted was whether the Massachusetts Housing Authority Law (G.L. (Ter. Ed.), c. 121 sec. 261 to 2611; as inserted by statute 1938, c. 484, sec. 1) is constitutional in view of the proposed expenditure of public money for a program of slum-clearance and construction of low-rent housing.

After referring to provisions of the housing enabling act authorizing housing authorities to exercise the power of eminent domain, to borrow money upon the issuance of bonds, exempting its property from taxation, and authorizing cities and towns to cooperate with housing authorities, including the appropriation of funds for defraying part of the development, acquisition and operating costs, the court stated:

"We hold that the Housing Authority Law is a valid exercise of the broad legislative power granted to the General Court by art. 4, s. 1, c. 1 of Part II of the Constitution. We have not found it necessary to consider any possible bearing of arts. 43 and 47 of the Amendments."

The court explained at length the distinction between a use or service which is public and therefore a proper object of governmental expenditure and one which is private and therefore an improper object of such expenditure; also the difference between the two objectives of the Housing Authority Law; first, the clearance of sub-standard areas or the abolition of slums, and, second, the provision of low-rent housing. With reference to the second objective, the court said:

"But this part of the statute does not stand alone. The two parts were intended to complement each other . . . The real purpose of the statute is therefore the elimination of slums and unsafe and insanitary dwellings, and the provision by public funds of low-rent housing is only a means by which the main object is to be accomplished. The statute as a whole is designed to serve a public need, and the money expended

for low-rent housing, as well as that expended for slum clearance, is for a public use."

It is to be importantly noted that the court distinguished its opinion of 1912 (In re Opinion of the Justices, 211 Mass. 624, 98 N. E. 611) which held unconstitutional a bill proposing to provide homes "for mechanics, laborers, or other wage-earners" or as suggested by an amendment thereto, to improve "the public health by providing homes in the more thinly populated areas of the state for those who might otherwise live in the most congested areas of the state". This 1912 decision has generally been considered by the opponents of the slum-clearance and low-rent housing program as the leading authority against its unconstitutionality.

Article 4 of the Constitution upon which the court based its holding provides that the General Court (Legislature) has "full power and authority" to enact "all manner of wholesome and reasonable" laws for the protection and preservation of the inhabitants of the Commonwealth; while articles 43 and 47 of the Constitutional Amendments, which were not considered, provide that the General Court is empowered to authorize the Commonwealth to provide homes for its citizens, through the sale thereof, to relieve population congestion, and the Commonwealth, cities and towns are authorized to provide "shelter" for their inhabitants in case of "public exigency". (Commonwealth of Mass., Supreme Judicial Court.)

CONSTITUTIONAL LAW - HOUSING AUTHORITIES - EMINENT DOMAIN

(Romano, et al. v. Housing Authority of the City of Newark, et al. Opinion decided November 8, 1939; New Jersey Supreme Court.)

The Housing Authority of the City of Newark, New Jersey, is constitutional.

This proceeding involved two suits in which the validity of the creation of the Newark Housing Authority and its power to condemn property for the purpose of constructing a public housing project was challenged. Pursuant to a state housing enabling act, the City of Newark had created the Authority which had authorized condemnation proceedings against certain properties. The objections were raised in the condemnation proceedings in which a limited stay was granted and writs of certiorari allowed.

In discussing the writs the court cited and discussed the case of Tide-Water Co. v. Coster, 18 N.J.Eq. 518, which held that the legislature was fully authorized to create the Tide-Water Company to assist in

the draining of marsh land where both the prerogatives of taxation and eminent domain was resorted to; also the case of *Simon v. O'Toole*, 108 N.J.L. 32, aff. id. 549, which involved legislation designed to eliminate blocks of unsafe and insanitary dwellings by taking by condemnation parts of land for the purposes of parks and playgrounds in the interest of the public health, safety and morals, and for the benefit of the public.

The court held that (1) the Authority was a valid body corporate and politic; (2) there is no unlimited delegation of legislative power; (3) the Act does not violate the provisions of the Constitution prohibiting the appropriation of money to or for the use of any society, association or corporation; the property of the Authority was exempt from taxation; and the Authority could exercise the power of eminent domain.

The opinion concluded by stating: " . . . there is no more reason why the legislature of our state may not, under its power of eminent domain, take private property in order to effect slum clearance than that it may take private property in order to provide for roads, railroads and swamp clearances. . . . "

CONSTITUTIONAL LAW - HOUSING AUTHORITY

(Hogg, et al. v. Housing Authority of the City of Rome, Supreme Court of Georgia. Opinion decided October 27, 1939.)

A petition was filed against the housing authority by persons as "residents, citizens, and taxpayers of the City of Rome, State of Georgia, and the United States" to enjoin (1) the exercise of any power or the transaction of any business under the state housing enabling act, as amended (Ga. L. 1937, p. 210; Ga. L. 1939, p. 122), and (2) the expenditure of money granted to it by the United States Housing Authority or contracting or obligating itself as to such monies in connection with the contemplated construction of a low-rent housing project.

The essential questions of attack were the alleged invalidity of (1) the resolution by the city commission creating the housing authority, and (2) the expenditure of Federal funds.

The Supreme Court held that the petition had been properly dismissed on general and special demurrers for reasons announced in *Barber v. Housing Authority*, also decided on October 27, 1939 (see page 5).

With reference to the attack on the expenditure of Federal funds, the court observed that the position of petitioners as "taxpayers" of the United States was no stronger than that of petitioners in the Barber case who were merely owners of land in view of the ruling in Massachusetts v. Mellon, 262 U.S. 447.

CORPORATIONS - EXPENSES OF HOUSING AUTHORITY

(Hogg, et al v. City of Rome. Supreme Court of Georgia.
Opinion decided November 17, 1939.)

Plaintiffs as "citizens, residents and taxpayers of the City" sought an injunction against the City to prevent the defraying of certain incidental expenses of the Rome Housing Authority which were authorized by contract between the City and the Authority pursuant to the Housing Co-operation Law (Ga. L. 1937, p. 697) in connection with the construction of a low-rent housing project. It was also alleged that the City had obligated itself (1) to eliminate dwelling units equal in number to the units to be constructed by the Authority, (2) to lay out and open and close streets for the benefit of the housing project; (3) to furnish water, lights, and sewerage; that the city did not have and would not have funds, not otherwise already appropriated, during 1939, for such purposes; and that for the City to carry out the provisions of the contract would create a debt against the City. Other contract provisions exempted the project from city inspection and payment of assessments.

The City filed a general demurrer which was sustained by both the trial and appellate courts.

The Co-operation Law provided for the expenditure of city funds not otherwise appropriated. Violation of this provision was alleged upon information and belief.

The court held that the Co-operation Law imposed no obligation upon the City to pay operating expenses of the Authority unless there was in the City Treasury money not otherwise appropriated; that in the absence of specific allegations that the city was violating its duty in expending money, the presumption of law was that it was not; that the contract did not create a financial obligation against the city; that the contract was not subject to attack in view of the validating act of the Legislature (Ga. L. 1939, p. 126) ratifying and declaring legal contracts between cities and housing authorities when no attack was made upon its validity; and that the co-operation contract was not in violation of any city charter provision because entered into

pursuant to an act of the Legislature which may enlarge or diminish the powers of a city at will.

CONSTITUTIONAL LAW - CONDEMNATION - HOUSING AUTHORITY

(Barber, et al v. Housing Authority of the City of Rome.
Supreme Court of Georgia. Opinion decided October 27,
1939)

This case involved a petition filed on behalf of plaintiff for herself and as next friend of her two children, as owners of land, against the Housing Authority of the City of Rome to enjoin it against condemnation, the expenditure of or contracting with regard to Federal funds, and the transaction of any business or the exercise of any power under the state housing enabling act, as amended. The petition also attacked the resolution of the City creating the Authority; the validity of the condemnation notice served on petitioners resolution for condemnation; and the general constitutionality of the housing enabling acts.

The Authority demurred, contending that the petition stated no cause of action. The trial court sustained the demurrers, which action was affirmed on appeal.

With reference to the attack upon the constitutionality of the Housing Authority Law (Ga. L. 1937, p. 210), the court reaffirmed its opinion in Williamson v. Housing Authority of Augusta, 186 Ga. 673. The amendatory act (Ga. L. 1939, p. 112) permitting housing authorities to acquire a fee-simple title to property was held valid, not being a special law and not attempting to amend the law of 1937 without a proper description thereof.

The resolution creating the Authority was held valid, but the court concluded that even if it had not been, the "validating act" (Ga. L. 1939, p. 126), which was not attacked, made legal the creation of the Authority.

The court held that the condemnation notice was sufficient and that whether or not the resolution for condemnation was sufficient with respect to the description of the petitioners' property was not subject to complaint since parol testimony of such identification was admitted without objection at the hearing.

Finally, it was held that petitioners suing as owners of land showed no right to attack in equity the legality of the receipt or expenditure of Federal funds by the Authority in view of the decision in

Massachusetts v. Mellon, 262 U.S. 447, which held that an individual, proceeding merely as a past and future Federal taxpayer, cannot maintain a suit to restrain the enforcement of an act of Congress authorizing an appropriation of public money for the reason that some threat or direct injury, not suffered merely in common with taxpayers generally, must be shown.

COURTS - PROCEDURE

(Josephine Lovero v. HOLC, Supreme Court, Nassau County, New York.)

HOLC, being a public corporation, cannot be required to submit to examination before trial pursuant to Sections 288 et seq. of the Civil Practice Act of New York.

In a suit in New York against HOLC for damages for personal injuries, the plaintiff moved the Court for an order directing HOLC to be examined before trial through its State Manager and one of its agents or employees, Gusey. The motion purported to be filed pursuant to the provisions of the Civil Practice Act of New York. In an affidavit in opposition to the motion, HOLC raised the question that being a Federal agency and instrumentality of the United States, the Civil Practice Act does not apply to it and that it cannot be required to appear for examination before trial as can an individual or private corporation. In overruling the plaintiff's motion, the court said:

"The Home Owners' Loan Corporation is an instrumentality of the United States government created to supply direct relief to home owners (Home Owners' Loan Act of 1933, 48 Stat. 128). Its capital stock is wholly subscribed by the Secretary of the Treasury on behalf of the United States, and its bonds are guaranteed by the United States. It is thus a public as distinguished from a private corporation and as such may not be required to submit to examination before trial, pursuant to Sections 288 et seq. of the Civil Practice Act. (Smith v. Citizens' Savings Bank, 166 Misc. 843, and authorities therein cited.) The motion is accordingly, denied."

/Note--same holding in Rose Goldman and Benjamin Goldman v. HOLC, Appellate Term, Second Department of the Supreme Court of New York./

DEFICIENCY JUDGMENTS - LEGISLATURE - LAWS

(Guardian Depositors Corporation of Detroit v. Darmstaetter, ----Mich.----, 288 N.W. 59.)

The Legislature could not, by the act of 1937 relating to deficiency judgments in cases where real estate mortgages are foreclosed by advertisement and sale, deprive a mortgagee or his assignee of the right to a jury trial on the issue of mortgaged property's value at time of foreclosure, in proceeding against mortgagor to recover a deficiency judgment.

This action was brought by the plaintiff against defendant to recover a sum of money representing an alleged deficiency arising out of the foreclosure of a mortgage on real estate, wherein defendant filed a claim of set-off. From a judgment for defendant, plaintiff appealed.

The Public Acts of 1937, Act No. 143, relating to deficiency judgments in cases where the foreclosure of real estate mortgages is by advertisement, provides that the issue of whether the property was sold at a price substantially less than its true value shall be determined by the court without a jury.

It was sought to justify this provision of the statute because it related to procedure, and usually methods of procedure are subject to legislative control.

The court, in reversing the judgment, and holding that the statute in question was unconstitutional and void insofar as it prohibited a jury trial of the prescribed issue, said: "Statutory changes in procedure denying the right of trial by jury are unwarranted and in conflict with the Constitution which provides 'the right of trial by jury shall remain'. Constitution (1908), art. 2, § 13.

"The right of trial by jury being constitutional, no substantial changes in its character can be made by the legislature. Underwood v. People, 32 Mich. 1, 20 Am. Rep. 633; Swart v. Kimball, 43 Mich. 443, 5 N.W. 635.

"Constitutional provisions similar to that of Michigan have uniformly been held to guarantee the continuance of the right as it existed at common law, or by statute, in the particular State at the time of the adoption of the Constitution. 35 C.J. p. 148, citing cases from 40 American Jurisdictions.

"The rule applies to cases of a similar character arising under statutes enacted subsequently to the adoption of the Constitution.

35 C.J. p. 149; Colon v. Lisk, 153 N.Y. 188, 47 N.W. 302, 60 Am.St.Rep. 609; White v. White, 108 Texas 570, 196 S.W. 508, L.R.A. 1918, A.339; Plimpton v. Somerset, 33 Vt. 283; Tabor v. Cook, 15 Mich. 322; Risser v. Hoyt, 53 Mich. 185, 18 N.W. 611.

"In Tabor v. Cook, 15 Mich. 322, a bill in equity was filed to quiet title to lands in possession of defendant by plaintiff who had purchased the same at tax sale. It was said: 'It is not in the power of the legislature, under our present Constitution, to provide for the trial of titles to land in equity, in cases which were triable at law at the time the Constitution was adopted, unless it shall first make provision for having the case tried by jury if the defendant shall so elect. The Constitution--Art. 6, § 27--says that "The right of trial by jury shall remain; but shall be deemed to be waived in all civil cases, unless demanded by one of the parties, in such manner as shall be prescribed by law". The intention here is plain: to preserve to parties the right to have their controversies tried by jury, in all cases where the right then existed--Work v. State, 2 Ohio St. 296 59 Am.Dec. 671; Norval v. Rice, 2 Wis. 22; Exline v. Smith, 5 Cal. 112; Hughes v. Hughes, 4 T.B.Mon. Ky., 42/, 43--and suitors can not constitutionally be deprived of this right except where, in civil cases, they voluntarily waive it by failing to demand it in some mode which the legislature shall prescribe.

"The present is one of those cases where a right to a trial by jury existed when the constitution was formed, and this right must therefore remain.'

"There is no doubt of the fitness of the issue in this case to be tried by a jury.'

"Prior to the enactment of this statute, the mortgagee, or his assigns, had a right, under the statutes in force at the time of the adoption of the Constitution, to trial by jury of the question of liability of the mortgagor for deficiency arising from the sale of mortgaged premises by advertisement.

"Having a right of trial by jury of the issue of the mortgagor's liability at the time the Constitution was adopted, such right of trial by jury may not be abrogated by subsequent legislative enactment but 'the right of trial by jury shall remain.'" (A dissenting opinion was rendered by Justice Bushnell.)

DEED OF TRUST - CONTRACTS - INCOMPETENCY OF EXECUTING PARTY

(J. Frank Warmath, Guardian and Trustee for Pike Hall James v. HOLC, Chancery Court, Gibson County, Tennessee)

Held, that knowledge or information leading a prudent person to believe that the other party to a contract is of unsound mind is such evidence of bad faith as will void the contract, but that where contract was made in good faith before an adjudication of insanity, it will not be set aside unless the consideration is restored even though notice (not indicating fraud or bad faith) of the sanity was proven. Decided on the principle that it is inequitable for an insane person by means of an apparent contract to gain an advantage or benefit which he cannot restore.

INJUNCTION - REFORMATION OF DEEDS

(Hofman v. Hofmann et al, Supreme Court, Westchester County, 14 N.Y.S. 2d, 565.)

Newspaper advertisements, pamphlets, circulars, and oral representations concerning plan for development of tract of land to be devoted to private residences only, and actual physical development thereof in accordance with such plan, were sufficient to establish uniform plan, so as to entitle purchasers of lots in tract to injunction against erection of apartment house on any part thereof.

This action was one of twelve separate actions brought by home owners in the City of Mt. Vernon against defendants and which were consolidated and tried as one. The actions seek to reform the deed conveying the properties in question and for an injunction preventing the erection of any apartment or tenement building upon property adjoining that of plaintiff.

The defendant, Sunwood Homes, Inc., was incorporated in 1935, and it purchased several lots in the City of Mt. Vernon and took options on nearby lots. In 1935 it began the construction of homes on the lots purchased, which homes were completed in June 1936, and all sold to the plaintiffs. Other homes were built and sold during the latter part of 1936 and the first part of 1937. The option on the other lots were taken up in September 1936.

The proof showed beyond question that, when the plaintiffs purchased their homes, it was represented to them that the tract of land owned by Sunwood Homes, Inc., purchased as above set forth, was to be

developed and used exclusively for residential purposes.

Oral representations were made to the prospective purchasers by Manton and Fagin, partners and only directors and stockholders in the Sunwood Homes, Inc., and advertisements, circulars and pamphlets were put out by them and circulated among the prospective purchasers. The literature described the property and set forth in detail the plan of development, and further stated that the property was to be devoted to private residences. The development was extensively advertised in the newspapers and stressed the fact that the homes were to be built all around a private park and some of the advertisements were illustrated by a plan of development with houses on four sides of the property in question. The purchasers of the property inspected it before buying and inquired if there was any possibility that any part of the land would be subsequently used for such purpose and they were assured by Manton and Fagin that no part would ever be used for any such purpose.

The testimony showed that the plaintiffs purchased their homes relying upon these representations. None of the contracts, however, contain covenants on this subject. It became known in August 1938, that a deed had been made by the defendant Sunwood Homes, Inc., conveying parts of the property, which was originally obtained by exercising the option on them, to the defendant Regency Garden Apartments, Inc. It was conceded that this transfer was made for the purpose of erecting a large apartment house on the property specified. The actions referred to were brought soon after the transfer to the Regency Garden Apartments, Inc., became known.

The plaintiffs relied principally upon the doctrine laid down in *Phillips v. West Rockaway Land Co.*, 226 N.Y. 507, 124 N.E. 87, 88. In that case the facts were similar to the one in this case and even a little stronger for the defendant's agent in that case had a map which clearly indicated the lots.

The court in holding that plaintiffs were entitled to judgment said: "The defendants' counsel, while recognizing the doctrine of this case, seeks to distinguish it from the facts of the present case. It is asserted that the principle of the *Phillips* case is not applicable here because no map was ever filed by the defendant, Sunwood Homes, Inc., showing any uniform plan of development, and that the deeds to the purchasers in the present case did not include any reference to any such map, the fact being that the deeds all referred to the old map of Fleetwood made in 1854, and the descriptions showing that each conveyance only included a portion of one or more of such lots, and, further, that no map was exhibited to any of these twelve plaintiffs showing any such layout by the defendant, and, finally, that there was no map in the present

case as appeared in the Phillips case, containing a statement that the defendant reserved any right, title and interest in any part of the present tract of land. In my opinion, the filing of a map is not essential to establish a uniform plan. Of course, when a map is filed containing a lay-out of property for development, it is an important circumstance, as showing a representation of a uniform plan, but I am convinced that such a plan may be plainly shown in other ways. Here, we have all the literature put out by the defendant, newspaper advertisements, pamphlets, circulars and oral representations, together with the actual physical development of the property by the defendants so far as it was developed in accordance with such plan, all, it seems to me, showing clearly that the plan was to develop this entire tract with private dwellings only and that the plan was that these houses were to be built around a square so that the owners would enjoy the benefits of a public park.

"It would be hard to find a case where the evidence so conclusively shows a plan of development of real property explained in great detail for the purpose of inducing the public to purchase. It was clearly conveyed to the would-be purchasers that the whole tract was to be developed for residential purposes and even the particular method of locating the houses on the tract was clearly explained, so that the home owners would have the benefit of a public park resulting from the manner of development.

"In my opinion, the principle of the Phillips case applies here, and the plaintiffs are entitled to judgment which will prevent the defendants from using any part of the property in question for the erection of an apartment house."

LANDLORD AND TENANT - TORT

(Agnes Cox, by next friend v. HOLC, District Court of the U. S. District of Nebraska, Omaha Division.)

Held, that landlord of a single-family dwelling is not liable to tenant or member of his family for personal injuries sustained on the property due to the giving way of a window screen where such screen was designed primarily to keep out flies and insects and in the absence of proof showing negligence upon the part of the landlord constituting the approximate cause of the injury.

MALICIOUS PROSECUTION

(George M. Adams v. HOLC, et al. United States Circuit Court of Appeals, Eighth Circuit.)

Adams sued HOLC for \$1,155,000 damages for malicious prosecution. The opinion of the United States Court of Appeals, Eighth Circuit, rendered November 4, 1939, is as follows:

"George M. Adams appeals from a final judgment which dismissed an action brought by him against the Home Owners' Loan Corporation for damages for malicious prosecution. The judgment followed upon the court's sustaining a demurrer filed by the Home Owners' Loan Corporation to the amended petition.

"The Home Owners' Loan Act of 1933, 12 U.S.C.A. 1461-1468, authorized and directed the Federal Home Loan Bank Board to create a corporation 'to be known as the Home Owners' Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and to be sued in any court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such by-laws, rules, and regulations as it may prescribe for the accomplishment of the purposes and intent of this section.' The Act provided the steps of organization and the functions of the Corporation and prescribed criminal penalties against any person who perpetrates certain frauds against the Corporation or against the Board. 12 U.S.C.A. 1467. To accomplish the enforcement of the criminal penalties the Board adopted and promulgated Section 17, Ch. VI. 'Manual of Rules and Regulations', as follows:

"Penalties or Criminal Matters - In substance the Home Owners' Loan Act imposes penalties (a) for the making of any false statement or the overvaluing of any security for the purpose of influencing the action of the Corporation on a loan ... The Legal Department in Washington handles all criminal matters in cooperation with the Department of Justice. Any person having reason to believe that there has been a violation of law affecting the Home Owners' Loan Corporation should forward the information with all available supporting data directly to the Home Owners' Loan Corporation, Criminal Section, Legal Department, Washington, D. C."

The plaintiffs' suit was originally filed in July 1938, against HOLC and certain individuals said to be officers of the Corporation. They have since been dismissed from the case. In the petition, as amended, it was alleged that the Corporation maliciously and without probable cause procured the plaintiff to be indicted by the Federal

grand jury in the Central Division of the Southern District of California and the indictment was set out in the pleading. It accused the plaintiff in three counts of conspiring to commit and committing crimes denounced by the Home Owners' Loan Act (Sec. 8 a) in procuring, preparing and causing to be filed false "Affidavits of Eligibility" in support of loans applied for and authorized by the Act to be made by HOLC. Plaintiff alleged that the accusations in the indictment were false and that the defendant maliciously caused the indictment to be found upon fraudulent evidence and upon false testimony of witnesses, the defendant well knowing the testimony to be false and without probable cause to believe the plaintiff guilty of any of the said crimes. It was further alleged that defendant had procured the plaintiff to be brought to trial upon the indictment and that the trial had resulted in acquittal.

"The Home Owners' Loan Corporation demurred to the amended petition on three grounds, each of which were sustained by the trial court. In view of our conclusions on the appeal, we need to discuss only the grounds that the petition did not state facts sufficient to constitute a cause of action against the defendant.

"The plaintiff's petition did not detail any of the steps taken by the defendant Corporation which constituted the alleged procurement of the indictment and instigation of the malicious prosecution for which recovery was sought. A fair inference from the allegations of the petition is that officers of the Corporation, in connection with their work for the Corporation but acting maliciously and without probable cause, forwarded information against the plaintiff to the 'Criminal Section (of the Home Owners' Loan Corporation), Legal Department, Washington, D. C.' as contemplated in the Regulation of the Board above set forth, and that the prosecution of plaintiff resulted proximately from such action. It was conceded at the bar that the petition might be so construed.

"The contention of the Home Owners' Loan Corporation upon the foregoing ground of the demurrer is that the acts of the Corporation and its officers and employees which occasioned the criminal prosecution against the plaintiff were official acts, done in performing governmental functions, and that such official action can not be made the basis of a suit for malicious prosecution. It is pointed out that the Act imposes the duty of its administration upon the defendant Corporation. A strict enforcement of its criminal provisions is necessary to successful administration of the Act and the regulation of the Board requiring information concerning violations affecting defendant Corporation to be sent to the 'Home Owners' Loan Corporation, Criminal Section, Legal Department, Washington, D. C.' is a proper regulation adapted to

carry out the Act. The public interest will necessarily suffer unless all the employees of the defendant Corporation who have to do with loaning out the government money are vigilant and zealous to prevent and inform against frauds upon the Corporation brought to their notice in the course of their service. The gist of an action for malicious prosecution is the animus and motive - the malice of the accuser. Where, however, the accusation is made by public officers and in the course of their official duties, as when an information is filed by a district attorney, or an indictment by the foreman of a grand jury or a bind-over order by a committing magistrate, it is against public policy to allow an action for malicious prosecution to be maintained on account of such official acts. The policy doubtless results from the inherent public necessity of having justice administered through the process of accusation and trial which justifies immunity to those who are required by the laws to perform the indispensable official acts to that end.

"It is contended that the same principle of public policy is applicable to the present suit and justified the dismissal entered by the trial court. We are of opinion that the contention is sound and that the principles defined in *Spalding v. Vilas*, 161 U.S. 483; *Phelps v. Dawson* (C.C.A. 8) 97 F. (2d) 339, and *Cooper v. O'Connor*, App. D. C. 99 F. (2d) 135, are controlling in this case and require affirmance of the judgment. Whether or not the officers and employees of the Home Owners' Loan Corporation entertained malice towards the plaintiff, or whether they acted in bad faith and without probable cause in forwarding information against him, the fact remains that the Corporation is an agency of the government charged by the Act and the Regulation made pursuant to the Act, with an official duty to forward information concerning violations of law affecting the Corporation. Its motives in so doing can not be made the basis of an action against it by an individual in a malicious prosecution suit.

"Cases are cited to the point that the Home Owners' Loan Corporation may be subjected to suit for damages arising in tort as well as upon contract. *Keifer & Keifer v. Reconstruction Finance Corporation*, 306 U.S. 381. *Sloan Shipyard Corporation v. U.S.S.B. Emergency Fleet Corporation*, 258 U.S. 540; *Pennell v. Home Owners' Loan Corporation*, 21 F. Supp. 497; *Panama R. Co. v. Curran*, 256 F. 768; *U. S. v. Strang*, 254 U. S. 491; *Central Markets, Inc. v. King*, (Neb.) 272 N.W. 244. They have been considered but are not found controlling here, nor do we deem it necessary to discuss other questions ably argued in the briefs. Affirmed."

MORTGAGES

(HOLC v. Regina Paul, et al. Circuit Court, Ingram County, Michigan, in Chancery.)

Foreclosure of a first mortgage extinguished the second mortgage which was not revived when HOLC made recovery or redemption loan that enabled mortgagor to reacquire title.

Paul executed a first mortgage to Prudential Insurance Company and a second mortgage to Stewart. The second mortgage stated in its granting clause following the description that it was subject to the mortgage to Prudential. In a later paragraph of the second mortgage Paul covenanted that he was well and truly seized of the premises in fee simple free of all encumbrances whatever except as above described and that he would warrant and defend the same against all lawful claims whatever. Subsequently the Prudential or first mortgage was foreclosed and the period of redemption expired, the title becoming absolute in Prudential. HOLC then made a recovery or redemption loan to Paul, causing Prudential to convey to Paul and Paul to mortgage to HOLC. Stewart then contended that when title again vested in Paul his (Stewart's) mortgage revived and reattached--and prior to the mortgage of HOLC.

The court found that the covenant in Stewart's mortgage was qualified by the statement in his mortgage that it was subject to the Prudential mortgage and by the exception of the Prudential mortgage. The court therefore held that Paul was not estopped to assert that Stewart's mortgage had been extinguished by the foreclosure of the prior Prudential mortgage or to deny that it revived and reattached; that Stewart's mortgage was so extinguished, and that it did not revive or reattach when Paul again acquired title.

MORTGAGES - PRIORITIES - RECORDING

(HOLC v. Walter Nasierowski, et al. Circuit Court, Wayne County, Michigan, in Chancery.)

An HOLC mortgage is entitled to priority over unrecorded mortgage of which HOLC had no notice at time it made its loan.

Walter Nasierowski and wife were purchasing from Helen B. Smith realty involved under a land contract dated March 2, 1929. The property was, however, subject to a prior mortgage in favor of the Missouri State Life Insurance Company. On May 2, 1932, Walter Nasierowski executed a mortgage on the property to Frank J. Kolodziejwski and wife, but this mortgage was not recorded until September 10, 1934.

On July 1, 1932, Nasierowski and wife being in default on their land contract, Helen B. Smith obtained judgment of restitution. Missouri State Life Insurance Co. then foreclosed its mortgage and obtained a sheriff's deed to the property on June 13, 1933. On September 8, 1933, Missouri State Life Insurance Company conveyed the property to General American Life Insurance Company.

On July 19, 1933, Nasierowski and wife applied to HOLC for a loan with which to redeem or recover the property from the foreclosure of the Missouri State Life Insurance Company mortgage and the land contract. They did not disclose the existence of the still unrecorded mortgage to Kolodziejski and wife, and HOLC made the loan without knowledge of it, its mortgage being recorded on May 29, 1934. Thereafter, Nasierowski and wife defaulted in their payments to HOLC and HOLC instituted foreclosure suit. In this foreclosure suit, Kolodziejski and wife contended that their mortgage was a lien prior to the lien of the HOLC mortgage. The court held that since the HOLC mortgage was recorded prior to the recording of the Kolodziejski mortgage and since there was no adequate or proper evidence of any facts or circumstances giving HOLC, at the time it took its mortgage, notice of, or putting it on inquiry concerning the then unrecorded Kolodziejski mortgage, HOLC had the prior lien on the property.

MORTGAGES - JUDICIAL SALES

(Schave et al v. New York Life Insurance Co., ----Okla.----, 94 P. 2d 892.)

Judicial sales should be final, and, in absence of fraud, unfairness, or inadequacy of price, so great as to shock conscience of court, there is no abuse of discretion in confirming sale made in conformity to statute.

The Metropolitan Life Insurance Company foreclosed upon property of defendant and received a judgment for \$7,603.09, interest, attorneys' fees and costs. The court further decreed that the property should be sold to satisfy said judgment if not paid within six months. The judgment was not paid and the property was advertised and sold, being bid in by plaintiff for \$8,000. Defendants filed objections to confirmation of the sale. Motion to confirm the sale was filed and sustained over defendants' objections.

In appealing this case the defendants attempted to show that the plaintiff, through its agent, fraudulently and wilfully gave out incorrect information regarding the amount due on the mortgage and the con-

dition of the title of the land in order to stifle the bidding thereon, and that prospective purchasers of the property thereby refused to enter into any sale agreement with defendants, by reason of such misrepresentations, thereby preventing defendants from redeeming the property. The theory upon which this is based is that there being a gross inadequacy of price, accompanied by these other circumstances, a presumption of fraud was thereby raised.

The court found that the original price of the mortgage was \$7,500 and that \$8,000 was bid. It said that "The decisions from this court are uniform in holding that mere inadequacy of price for property sold at a sheriff's sale is not sufficient to avoid the sale in the absence of fraud, irregularity or other causes, unless the consideration is so grossly inadequate as to shock the conscience of the court." *McLain Land & Investment Co. v. Swofford Bros. Dry Goods Co.*, 11 Okl. 429, 68 P. 502; *Aldridge Hotel Co. v. Mainard*, 171 Okl. 422, 43 P. 2d 738; *Myers v. Carr*, 173 Okl. 335, 47 P. 2d 156; *Fiolle v. First Nat. Bank*, 173 Okl. 501; 49 P. 2d 145; *Local Federal Savings & Loan Ass'n v. Knie*, 177 Okl. 633, 61 P. 2d 635.

The court further went on to say that: "In the instant case no evidence was given that the price for which the plaintiff bid the property in was inadequate, nor were there any circumstances shown which would have justified the trial court in refusing to confirm the sale. The record reflects this foreclosure suit was filed May 5, 1936. The sale was held January 17, 1938, and confirmed March 11, 1938, at which time defendants did not offer any evidence to support their objections to the confirmation.

"In view of this, and in the absence of a showing of other circumstances, we decline to hold the price paid at the foreclosure sale was inadequate; particularly in view of the further fact that defendants had ample opportunity to present evidence to the trial court in support of their objection to the confirmation of sale, but failed to do so.

"It is a settled principle of law in this jurisdiction that the trial court's judgment upon a motion to confirm or set aside a judicial sale will not be disturbed on appeal, unless it affirmatively appears the trial court abused its discretion. See *Burton v. Mee*, 152 Okl. 220, 4 P. 2d 33; *Jorden et al v. Mee*, 172 Okl. 457, 45 P. 2d 502; *Fernow v. Watts*, 172 Okl. 128, 44 P. 2d 24; *University of Tulsa v. Moores et al.*, 177 Okl. 548, 61 P. 2d 25."

It was found that the sale was properly advertised so defendants' argument to the contrary was overruled. The decision of the lower court was affirmed.

MUNICIPAL CORPORATIONS - MANDAMUS

(Cortellini v. City of Niagara Falls, et al. Supreme Court Appellate Division, Fourth Department, 14 N.Y.S. 2d, 924.)

A proceeding in the nature of mandamus by a taxpayer to compel city manager and building commissioner to institute proceedings against a property owner to the end that owner's building should conform to the building code and to prevent occupancy of building until it was made to conform, which proceeding was to prevent the property owner from occupying building and not for the benefit of public generally would not lie.

This was an action in the nature of a mandamus proceeding by the plaintiff against the City of Niagara Falls, N. Y., and two of its officials, who alleged that as a citizen and taxpayer he has "an inherent interest in the enforcement of the Building Code and other ordinances of the City of Niagara Falls;" and that he is interested in this proceeding because he is the owner of the property adjacent to that of the defendant Lostracco. The purpose of plaintiff's proceeding is to prevent defendant, Lostracco, from occupying the building in question and not for the benefit of the public generally.

The court upon finding that the acts complained of did not affect the people of the City of Niagara Falls generally and did not cause any special injury to the people of such city, held against the plaintiff and said:

"The petitioner claims that the Building Code was adopted to insure the health and welfare of the public. However, if the occupancy of this building is detrimental to the city by the threat of injury 'so imminent and substantial as to make it proper that the taxpayers be protected', then the petitioner has a remedy by a taxpayer's action for an injunction. General Municipal Law, sec. 51; Campbell v. City of New York, 244 N.Y. 317, 330, 155 N.E. 628, 50 A.L.R. 1473.

"A peremptory order will not be granted where another remedy is provided by law. Matter of Towers Management Corp. v. Thatcher, 271 N.Y. 94, 97, 2 N.E. 2d 273.

"The remedy sought herein may not be used to prevent 'third parties from doing illegal acts'. Matter of Walsh v. LaGuardia, 269 N.Y. 437, 199 N.E. 652, 653.

"It is apparent that this proceeding was instituted to prevent Lostracco from occupying the building in question and not for the benefit of the public generally. It would not be a wise exercise of

judicial powers to interfere with the administrative officials of the city in the performance of their duties, unless the illegal acts complained of result in the waste of public funds or are so flagrant and numerous as to be injurious to the public welfare. But even in such cases it may be well to leave it to the voters of the city to prevent the continuance in office of such officials. Generally it may be said that the courts will not seek to enforce laws and ordinances by peremptorily ordering administrative officials to institute proceedings under such laws and ordinances. Matter of Walsh v. LaGuardia, supra; People ex rel Clapp v. Listman, 40 Misc. 372, 82 N.Y.S. 263, affirmed 84 App. Div. 633; 82 N.Y.S. 784; Matter of Carmody v. City of Elmira, 160 Misc. 916, 290 N.Y.S. 1021.)"

MUNICIPAL CORPORATIONS - POLICE POWER - SPECIAL ASSESS-
MENTS

(City of East St. Louis v. Illinois State Trust Co.,
Illinois Supreme Court, October 10, 1939

Statute authorizing city to collect delinquent assess-
ment in action against owner after forfeiture of land
for nonpayment of assessment is unconstitutional.

An Illinois statute (R.S. 1937, Ch. 120) authorizing cities which have made improvements by means of special assessments to sue owners of property forfeited for nonpayment of assessments in an action of debt for the amount of the assessment is unconstitutional because in conflict with a provision of the State Constitution (Art. 9, Sec. 9) authorizing the Legislature to empower cities "to make local improvements by special assessment".

Under the Constitution, as construed by this court in prior cases, a city's remedy in the event of delinquency in the payment of special assessments is limited to a proceeding in rem against the property. The owner does not incur any personal liability.

In the instant case, a city invoking the statute for a personal judgment against the owner of land for forfeiture of the land for delinquency concedes that a judgment can operate only in rem before forfeiture, but contends that the rule does not obtain after forfeiture. It asserts in support of the contention that, since the remedy in rem has failed to enforce payment of the assessment, it may resort to an action in personam to compel payment. The contention is without merit.

The failure to collect a special assessment by proceeding in rem cannot transform a liability in rem into a personal liability. The

reasoning of this court in prior cases in holding that a special assessment creates in the first instance only a liability in rem, recoverable against the particular tract of land assessed, applies with equal cogency after a judgment of forfeiture has been obtained. The judgment of forfeiture is the final step in collecting the delinquent assessment from the premises, and for special assessments it is the exhaustion of the liability allowed by the constitution.

The city's contention is supported by the case of *Smith v. People*, 3 Ill. App. 380, "but with that reasoning we are unable to agree."

MUNICIPAL CORPORATIONS - ZONING

(*Geisenfeld v. Village of Shorewood et al.* Supreme Court of Wisconsin, 287 N.W. 683.)

Where the adoption of a municipal zoning ordinance is a reasonable exercise of police power, such an ordinance cannot be successfully assailed as unconstitutional. A municipal zoning ordinance is presumed to be valid, and one who asserts its invalidity must establish his claim by making the fact of its invalidity clearly appear and showing that ordinance is not reasonable in respect to his property.

This action was commenced by the plaintiff against the defendants; Village of Shorewood, its manager, trustees, clerk, and the Attorney General of Wisconsin, for the purpose of obtaining a declaratory judgment as to the constitutionality of so much of a zoning ordinance as restricted the use of certain lots belonging to the plaintiff, to residential purposes. From a judgment which declared the ordinance unreasonable, unconstitutional and void, and perpetually enjoined the defendant village and its officers from enforcing it insofar as it applied to the plaintiff's property the defendants appealed.

The Village of Shorewood adopted a zoning ordinance applicable to the entire village. The plaintiff owned three lots which by the ordinance were classified as residential property. The facts of the case show that all around plaintiff's property are located stores, filling stations, etc., and that his property is worth less than half of what it would be worth if it were so classified that he could build an apartment house or a business building on it. Plaintiff assailed the ordinance insofar as it classified his three lots as residential property and contended that the ordinance as to him is arbitrary, unreasonable, discriminatory and confiscatory and violates his constitutional rights.

The trial court found many of the facts to be as stated and "concluded that the ordinance which classified the plaintiff's property as residential was adopted without due consideration being given to the natural development of the village in the area surrounding the plaintiff's property; that the plaintiff's property was and now is in the heart of an apartment and business district; that the classification of the plaintiff's property as residential deprives the plaintiff of his property without due process of law and denies the plaintiff the equal protection of the law; that the action of the board of trustees in classifying plaintiff's property as residential was and is arbitrary, unreasonable, unjustified, discriminatory, confiscatory and an abuse of discretion and an abuse of the exercise of its power; that the plaintiff's premises are not desirable for residential purposes and cannot be profitably used or disposed of for such purposes; that the retention of the plaintiff's property in a residential district has reduced its natural value from \$125 to \$40 per front foot and that the erection and construction of an apartment or business structure on plaintiff's property will not in any way affect either the public health, safety, welfare or morals of the community."

In upholding the decision of the Trial Court and holding that it did not err in its decision and judgment the Supreme Court said in part: "The ordinance as a whole is not assailed. The constitutionality of zoning ordinances was sustained in *State ex rel. Carter v. Harper*, 182 Wis. 148, 196 N.W. 451, 33 A.L.R. 269, where the adoption of such an ordinance is a reasonable exercise of the police power such an ordinance may not successfully be assailed. *State ex rel. Carter v. Harper*, supra.

"There must be some reasonable basis for legislative activity in respect to the matter dealt with, else the subject is outside the scope of legislative interference . . . reasonable doubts being resolved in favor of legislative discretion." *Mehlos v. Milwaukee*, 156 Wis. 591, 146 N.W. 882, 885, 51 L.R.A., N.S., 1009, Ann. Cas. 1915 C, 1102.

"The very fact of delegation of this power [zoning power] to common councils implies a field of legislative discretion within which its acts are not subject to judicial review. It is only when the bounds of that field are clearly exceeded that courts will deny validity to such an ordinance." *La Crosse v. Elbertson*, 205 Wis. 207, 237 N.W. 99, 101.

"In *State ex rel. Tingley v. Gurda*, 209 Wis. 63, 243 N.W. 317, we held that a city ordinance in so far as it placed in a residential district property in the heart of an industrial area having far less value for residential purposes was unconstitutional as being

unreasonable. In *Rowland v. City of Racine*, 223 Wis. 488, 271 N. W. 36, it was held that the ordinance there considered, in so far as it classified the property belonging to the plaintiff as residential property, was unreasonable, unconstitutional and void. A zoning ordinance is presumed to be valid and he who asserts its invalidity must 'establish his claim,' *La Crosse v. Elbertson*, supra; 'must make the fact of its invalidity clearly appear,' *State ex rel. Newman v. Pagels*, 212 Wis. 475, 250 N.W. 430, 432; or 'must show that it is unreasonable in respect to his property', *Rowland v. City of Racine*, supra [223 Wis. 488, 271 N.W. 38].

"We are of the opinion that the undisputed physical facts justify the conclusions of the trial court that the board of trustees in adopting the ordinance restricting the plaintiff's lots to residential purposes, clearly exceeded the bounds of legislative discretion, and that the ordinance in that respect was unconstitutional and void because 'clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.' *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 121, 71 L.Ed. 303, 54 A.L.R. 1016; *Zahn v. Board of Public Works*, 274 U.S. 325, 47 S. Ct. 594, 71 L.Ed. 1074; *Nectow v. City of Cambridge*, 277 U.S. 183, 48 S. Ct. 447, 72 L.Ed. 842. "

MUNICIPAL CORPORATIONS - ZONING

(*Aberdeen Garage, Inc. v. Murdock et al.* Supreme Court Appellate Division, First Department, 15 N.Y.S. 2d. 66.)

A variation under a city building zone resolution must do substantial justice, and to that end provision for variation must affect alike all persons in same situation. A single property owner's financial situation or pecuniary hardship affords no adequate ground for exercise of extraordinary power to vary application to zoning act.

The Board of Standards and Appeals denied an application under the amended Building Zone Resolution to permit the extension to an existing public garage. The petitioner purchased the property next to his garage several years after purchase of the garage and sought to build a greasing station, etc., on this property.

At the hearing before the Board the neighboring property owners appeared and objected to the granting of the application. They contended that if the petitioner were to succeed, the value of their apartment house properties would be diminished and gas fumes, etc., would be detrimental to the health and safety of their tenants.

The Board did not grant the application. The petitioner made an application at Special Term, Bronx County, to review the determination

of the Board, and an order was issued annulling the determination and decision of the Board and granting relief to the petitioner.

On appeal this decision was reversed. The court said: "We are of the opinion that the conclusion which the Board reached was correct. It would not require any great stretch of the imagination to say that the petitioner purchased the property with the thought in mind of making the present application. Consequently, it cannot well be contended that the restriction imposed by the Resolution caused petitioner such a peculiar hardship that entitles it to the special privilege it seeks. The point is well summed up in *Matter of Young Women's Hebrew Association, et al v. Board of Standards and Appeals of City of New York*, 266 N.Y. 270, 194 N.E. 751, 753, wherein Judge Loughran said: 'A variation under section 21 must do "substantial justice".' To that end, the section, so far as is practically possible, must affect alike all persons in the same situation. Equality of privileges is a basic principle of government. To cure by exemption in his case the loss resulting to one owner from general deterioration of a neighborhood is to depreciate the adjacent properties of other owners, and is unjust also to those whose properties remain subject to the same restriction in other localities likewise impaired. Moreover, such a theory of variation would in the long run defeat the general purpose of a zoning law. We are in accord with the reasoning of the Supreme Judicial Court of Massachusetts in *Prusik v. Board of Appeals*, 262 Mass. 451, page 457, 160 N.E., 312, 314, where Rugg, C.J., said for the court (457): 'It is manifest from the general purpose underlying any zoning act . . . that the power to vary the application of the act is to be exercised sparingly. Exceptional circumstances alone justify relaxation in peculiar cases of the restrictions imposed by the statute. The dominant design of any zoning act is to promote the general welfare . . . The stability of the neighborhood and the protection of property of others in the vicinity are important considerations. The financial situation or pecuniary hardship of a single owner affords no adequate ground for putting forth this extraordinary power affecting other property owners as well as the public.'"

MUNICIPAL CORPORATIONS - ZONING - MANDAMUS

(*Eastern Boulevard Corporation v. Willaredt et al.* Court of Errors and Appeals of New Jersey, 8 Atl. (2d) 688.)

An amendment to a town's zoning ordinance after an application for a building permit but before application to the Supreme Court for mandamus to compel issuance of permit, applied to the application, and, in absence of showing that

ordinance was unreasonable, was a bar to issuance of permit and to mandamus.

This appeal is from a judgment of the Supreme Court which had directed the issuance of a peremptory writ of mandamus to compel the building inspector and the commissioners of the Town of West New York to issue a permit for the construction of a five-story apartment building.

It appears that on March 22, 1938, an amendment to the zoning ordinance was adopted by the governing body, placing the lands of the relator in a zone restricted against the erection of apartment houses more than two and one-half stories in height and designed for use by more than three families. The Supreme Court set aside this amendment because of irregularities in the adoption of it. This judgment was rendered September 12, 1938.

On May 26, 1938, the relator applied for a building permit for the erection of the proposed apartment house, and the building inspector declined to issue the permit.

On September 8, 1938, an ordinance was introduced to amend the zoning ordinance, which amendment likewise restricted relator's property against the proposed use, which was adopted on October 25, 1938.

The relator applied for a writ of mandamus which was granted on December 8, 1938. Therefore, at the time of the application for the mandamus the second amendment to the zoning ordinance, the adoption of which was not attacked, was in effect.

The Supreme Court held that the record did not show the reasonableness of the restriction, and since there was no valid ordinance zoning the property against apartment houses in existence on May 26, 1938, the relator was entitled to its permit, notwithstanding the adoption of a valid amendment before the application for mandamus was made.

This court in upholding the issuance of the writ of mandamus said: "As to the reasonableness of the restriction, we are of the opinion that the burden was upon the relator to demonstrate that it was unreasonable and that there was no duty upon the town to sustain its reasonableness, in the absence of proof to the contrary.. There was no evidence submitted to the Supreme Court upon this question and there is none in the record here. Hence, we conclude there was no justification for the issuance of mandamus upon this ground.

"Upon the question of whether or not the amendment to the zoning ordinance of October 25, 1938, was applicable to the relator's request for a building permit, we conclude that the holding in *Koplin v. South Orange*, 142 A. 235, 6 N.J. Misc. 489, affirmed 105 N.J.L. 492, 144 A. 920, and the long line of cases following it, is applicable here. In that case there was a zoning ordinance which, under the decisions of our courts, was invalid insofar as it attempted to restrict the use relator sought to make of her property. After her application for a permit was refused and after a rule to show cause was allowed and the matter submitted to the court upon the return of the rule, the zoning amendment to the constitution was adopted and the enabling act validating previously existing ordinances was enacted. It was held that the court should consider the state of the law at the time of its decision and refuse to exercise its discretion to issue mandamus, citing *Rohrs v. Zabriskie*, 102 N.J.L. 473, 133 A. 65. The latter case was one in which an amendment to the building code was adopted after a permit was applied for but before decision by the court. The amendment had to do with the elimination of fire hazard and did not concern zoning, but this makes no difference in the legal principle involved. A valid exercise of the police power by the municipality for one purpose would be as effective as for another. As was said in the *Koplin* case [142 A. 237, 6 N.J. Misc. 489], in discussing the *Rohrs* case: 'For we believe it to be immaterial whether the changed conditions arise from an intervening valid municipal ordinance, as in that case, or from a statute enacted pursuant to an amendment of the Constitution of the state, as in this case.'

"Likewise, the reasoning of the *Koplin* case applies here even though the changed conditions there resulted from constitutional amendment and statute. A valid exercise of power by the municipality would be as effective as the exercise of power by the people and the legislature . . .

"We conclude, therefore, that under the reasoning of the cases cited, the amendment to the zoning ordinance adopted October 25, 1938, was applicable to the relator's case, and was, if properly adopted and reasonable, a bar to the issuance of a permit and a writ of mandamus therefor. The relator therefore was not entitled to the peremptory writ of mandamus unless it established the invalidity or unreasonableness of the amendment and it produced no proofs to do so."

MUNICIPAL CORPORATIONS - MANDAMUS - ZONING

(Miller v. Seaman et al. Superior Court of Pennsylvania, 8A 2d 415.)

Where city building inspection superintendent denied building permit for specified reason, unconnected with city zoning regulations, that proposed dwelling was not as wide as required by previously repealed statute, mandamus proceeding to require issuance of permit by such officer, rather than appeals to Board of Adjustment and courts, was proper remedy for permit. Limitation of right to use one's own property by city zoning regulations must be reasonable and based on imperious considerations of public health, morals and safety, not artistic or aesthetic consideration.

This proceeding was brought by plaintiff for a writ of alternative mandamus to require defendant, superintendent of the bureau of building inspection of the city of Pittsburgh, to issue a building permit to her. Anna Brosnan and another intervened as defendants. From an order overruling plaintiff's demurrer to interveners' answer, plaintiff appealed.

"This case, while concerned with the same subject matter as was involved in Brosnan's Appeal, 129 Pa. Super. 411, 195 A. 469, affirmed in 330 Pa. 161, 198 A. 629, has to do with a wholly different legal question."

Appellant is the owner of a lot of ground located in a Class B residential district in Pittsburgh. She applied for permission to erect a small dwelling house on it which was denied "for the reason that the said construction will be in violation of Act of Assembly approved April 28, 1899, P. L. 85, section 1, 53 P. S. section 8535, which provides: 'Every new dwelling house shall have at least fourteen feet front'."

"The act of assembly cited as the sole reason for refusing the application had nothing to do with zoning regulations ordained by the City under the Zoning Enabling Act of June 21, 1919, P. L. 570, and its amendments, 53 P. S. s. 10726 et seq. It was an amendment of section 15 of the Act of June 7, 1895, P. L. 135, regulating the construction, etc., of buildings in cities of the second class, and the entire section, including the amendment, was repealed by Act of May 13, 1915, P. L. 297, p. 300, s. 53 P. S. s. 9711 note."

Appellant filed this petition for writ of alternative mandamus to require the Superintendent of Building Inspection to perform the ministerial duty of issuing to her the permit applied for, authorizing construction of a one-story frame dwelling on her property. The original defendant having filed no answer judgment was entered in her favor.

Mrs. Brosnan and Mrs. Coyne had presented, a day before the judgment, their petition praying for leave to intervene as defendants. This was granted.

The intervening defendants filed an answer in which they set up: "(1) the decree in Brosnan's appeal, supra; (2) the continued maintenance on the lot of the structure declared illegal in Brosnan's appeal, supra, as to its use of the western 4 feet of her lot; (3) that the proposed building is not a one-family dwelling, but a spite fence; and (4) that the appellant's remedy was by an appeal under the zoning act and ordinance and not by writ of mandamus.

"The plaintiff demurred to the answer, and the court, after hearing argument, overruled the demurrer, on the grounds: (1) that the proposed building did not have sufficient width to constitute it a dwelling; (2) that the plaintiff should have appealed to the Board of Adjustment from the refusal of the permit, in accordance with the provisions of the Zoning Law and ordinance; and (3) that accordingly the action in mandamus would not lie."

The plaintiff appealed and the court in reversing the decision of the lower court said: "On a strict decision of the respective contentions, we are of opinion that the zoning ordinance is not involved in this appeal. The application for a permit asked for nothing contrary to the zoning regulations. Had the permit been refused because the proposed dwelling failed to comply with the zoning regulations, or had the application for a permit asked for something contrary to the terms of the zoning ordinance, plaintiff's only recourse would have been to appeal to the Board of Adjustment and then, if necessary, to the courts. *Taylor v. Moore*, 303 Pa. 469, 154 A. 799; *Taylor v. Haverford Twp.*, 299 Pa., 402, 149 A. 639. But at no time did the Superintendent of Building Inspection advance such a reason for refusing to issue the permit but, on the contrary, specified a reason not connected with the zoning regulations. . . .

"We are unable to find any statements of fact in the return on which the conclusion that the proposed building cannot be used as a dwelling may be based. It contains more area than a one-story building 14 feet by 30 feet. That it is to be built of frame is not contrary to any law or zoning regulation for a class B residential district in cities of the second class. Nor does it violate such regulations because it is to be only one-story in height. *Com. ex rel. Shooster v. Devlin*, 305 Pa. 440, 158 A. 161; *State ex rel. Sale v. Stahlman*, 81 W. Va. 335, 94 S. E. 497, L.R.A. 1918C, 77; *Brown v. Board of Appeals of Springfield*, 327 Ill. 644, 159 N.E. 225, 56 A.L.R.

242; *Dorison v. Saul*, Supt., 98 N.J.L. 112, 118 A. 691. It is true that it may not harmonize or be in aesthetic agreement with the buildings of the intervening appellees on the north and west, but zoning laws and regulations are not based on aesthetics but on the health, morals and safety of the community, and these are not affected by the proposed building. The limitation of the right to use one's own property, which is one of the consequences of zoning regulations, must be reasonable and based on imperious considerations of public health, morals and safety, not on artistic or aesthetic considerations. *White's Appeal*, 287 Pa. 259, 267, 134 A. 409, 53 A.L.R. 1215; *Romar Realty Co. v. Haddonfield*, 96 N.J.L. 117, 114 A. 246. It requires something more than the latter to deprive this appellant of any and all use of her land, while holding her responsible for the taxes upon it, and at the same time, in effect, to confer the use of it as a permanent outlook upon the intervening appellees who bought, paid for and are entitled to only their own lots. So long as the plaintiff can use her lot for a dwelling within the provisions and regulations of the zoning ordinance, she has a right to do so, irrespective of its effect on the aesthetic sensibilities of her neighbors.

....

"As we said before, the refusal of the permit was not based on any violation of the zoning regulations, but because the width was not as great as was provided for in an act of assembly which had been repealed. See *Truitt v. Philadelphia*, 221 Pa. 351, 341, 70 A. 757. If the city or the Superintendent had filed an answer to the writ setting forth any alleged violation of the zoning regulations, it might be different. The Superintendent evidently realized that his refusal of the permit had been based on a reason that had no legal foundation, and as he had no other ground for refusing the permit he allowed judgment to be entered against him by default. The intervening defendants, not having set forth in their answer any specific violation of the zoning regulations, cannot be heard to object to the proceeding in mandamus as a proper remedy for the failure of a public officer to perform a purely ministerial duty. *Coyne v. Prichard*, 272 Pa. 424, 427, 428, 116 A. 315; *Wright v. France*, 279 Pa. 22, 25, 26, 123 A. 586; *Com. ex rel. Shooster v. Devlin*, 305 Pa. 440, 445, 158 A. 161; *Herskovits v. Irwin*, 299 Pa. 155, 160, 149 A. 195. Their right to defend as intervening defendants in this proceeding--mandamus--rises no higher than the original defendant's.

"Nor is the failure of the plaintiff to remove the construction which was declared unlawful by the courts any ground for refusing a permit for the construction of a building which is lawful.

"The remedy for plaintiff's failure to comply with the order

in the former case is not to deprive her of her lawful use of her property, but to take proceedings to stop the unlawful use of it."

MUNICIPAL CORPORATIONS - ZONING MAPS

(Capital Homes, Inc. v. Dandrow, et al. Court of Errors and Appeals of New Jersey, 8 A. 2d 325.)

The zoning ordinance and map of a township, and not the assessment map, will control in determining whether an ordinance prohibits building of apartment house on certain property.

"The question raised on this appeal is whether or not the building zone ordinance of the Township of Teaneck, appellant, prohibits the building of an apartment house on property of relator-respondent on Teaneck Road."

The lower court found that it did not and granted a writ of mandamus to compel the appellant to grant a building permit. In upholding this decision the Court of Errors and Appeals said:

"The boundaries of the various zones are provided for in section 14 of the ordinance by reference to an accompanying map which is expressly made a part thereof. This map clearly shows that Teaneck Road is zoned for business, which includes apartment houses, for a distance of 150 feet back from its frontage on both sides of the road . .

"It appears that a street called Allen Court is shown on an assessment map of the municipality. It is in the rear of relator's property and runs parallel to Teaneck Road. Allen Court is not shown on the zoning map. This reduces the size of the block, as it appears on the zoning map, to less than 300 feet in width. Appellant states that Allen Court is restricted to single-family dwelling houses. It is argued, therefore, that that classification applies to the frontage on Teaneck Road under the above quoted portion of section 14 of the ordinance."

"It does not appear when Allen Court was laid out and zoned nor is it material."

"The assessment map bears no relationship to the question of zoning. The zoning ordinance and map, which forms a part of it must govern and control. Clearly under it the relator's property was zoned for business or apartment-house purposes. It was entitled to the permit

and there was no abuse of discretion in the granting of the writ of mandamus to compel the granting of it."

POLICE COURT JURISDICTION - TRESPASS

(Edmund C. Fletcher v. John P. McMahon, et al. District Court of the United States for the District of Columbia, Civil action, No. 2065.)

Where one Fletcher was tried in D. C. Police Court and found guilty of trespass in a dwelling or building of HOLC located in the District of Columbia, his action to recover \$50,000 damages for false imprisonment was dismissed on the authority of Fletcher v. Wheat, 69 Appeals D. C. 259 and Booth v. Fletcher, 69 Appeals D. C. 351.

TAXATION - SHARES OF STOCK OF JOINT STOCK LAND BANK SUBJECT TO TAXATION

(Land v. Kentucky Joint Stock Land Bank. Court of Appeals of Kentucky, 131 S.W. (2d) 838.)

The shares of stock of a Kentucky joint stock land bank organized under the Federal Farm Loan Act are subject to state and county taxation unless exempt by state constitution, state statutes, or acts of Congress. The Constitution of Kentucky does not provide for such exemption, neither does any act of Congress.

In 1937 the Board of Supervisors of Fayette County assessed against the Kentucky Joint Stock Land Bank of Lexington the shares of its capital stock and such assessment was certified to the sheriff of that county, and tax bills were retained by J. Porter Land, as special tax collector of the county, under provisions of the Kentucky statutes, at the expiration of his term of office as sheriff on January 31, 1938.

The bank in instituting this action alleged that J. Porter Land was asserting claim against it for the tax bills made out under the assessment, that its shares of stock are not taxable for state or county purposes except that authority granted in the Farm Loan Act which provides that its stock shall be taxable only in the manner and subject to the conditions and limitations contained in title 12, section 548 U.S.C.A. which relates to taxation of shares of National banks; that by section 4092, Kentucky Statutes, provision had been made for taxation of shares of stock in state banks and trust companies and national banks doing business in Kentucky by the assessment of

shares of stock of such banks against them as agent of their shareholders but that the General Assembly had not passed any law providing for the assessment of shares of the Joint Stock Land Bank either in their own right or as agent of the shareholders; and that it had never engaged in operation as a bank and does not receive deposits, make loans or extend credit except under the supervision and control of the Farm Credit Administration. It prayed that the tax bills against it be adjudged void and of no effect and that the defendant be enjoined from the collection of the tax or any part thereof.

Plaintiff was granted the relief sought and the defendant appealed.

Appellant contended that a joint stock land bank is a national bank and therefore its shares of stock are subject to taxation as provided in section 4092 of the Kentucky statutes. Appellee on the other hand contended that it was not a national bank within the meaning of this statute.

In reversing the judgment and holding that the shares of stock in a joint stock land bank are subject to taxation, the court said: "Under section 172 of our constitution all property not exempt from taxation by that instrument is subject to assessment for taxation and under section 4020, Kentucky Statutes, all real estate and all personal property, tangible and intangible, unless exempted by the constitution is subject to taxation. It is not to be doubted that under these constitutional and statutory provisions the shares of stock of the joint stock land bank are subject to taxation unless exempted by our constitution or some act of Congress. Our Constitution has granted no such exemption and neither has Congress but on the other hand Congress has by the quoted section [Title 12, section 548, U.S.C.A. (R.S.U.S. sec. 5219)] of the Federal Farm Loan Act specifically authorized such tax. Obviously in enacting sections 4019a-10 and 4092, the legislature intended that they should apply to all banks doing business in this state created under the laws of the state or under acts of Congress and the contention of appellant that these sections are broad enough in their scope to include appellee is not without force or merit.

"Furthermore, the section [section 932, title 12, U.S.C.A.] of the Federal Farm Loan Act above quoted empowered assessing and taxing authorities to assess and tax the shares of any joint stock land bank in the same manner as shares in national banking associations are assessed and taxed and that was done in this instance.

"We therefore unhesitatingly conclude that the chancellor erred in holding the assessment and tax bills to be void and in enjoining the collection of the tax."

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

CIVIL SERVICE COMMISSION published a notice of the condition of the apportionment as of the close of business on October 31, 1939. See 4 Fed. Reg. 4478.

Published a notice setting forth the condition of the apportionment at the close of business on November 15, 1939. See 4 Fed. Reg. 4618.

FARM CREDIT ADMINISTRATION: The Governor by order filed November 3 authorized each Deputy Land Bank Commissioner to sign orders: (1) appointing conservators for national farm loan associations, and (2) approving reports of conservators fixing the fair book value of the stock of a national farm loan association and terminating the appointments of conservators. See 4 Fed. Reg. 4473.

The Acting Land Bank Commissioner by regulation filed November 17 amended the Code of Federal Regulations with regard to the right of an insurance company which has made payment for a loss to a Federal land bank to subrogation against the endorsing national farm loan association. See 4 Fed. Reg. 4611.

The Governor by regulation filed November 24 designated the authority and order of precedence of the Deputy Land Bank Commissioners and the Chief of the Appraisal Subdivision. See 4 Fed. Reg. 4675.

The Governor by regulation filed November 24 amended the Code of Federal Regulations with regard to: (1) approval of acts of receivers of joint stock land banks; (2) authorizing Federal land banks and joint stock land banks to hold real estate for more than 5 years; (3) approval of Federal land bank loans in excess of \$25,000; (4) approval of Federal land bank and Land Bank Commissioner loans to livestock corporations in which 75 per cent in value and number of shares of stock is owned by individuals personally actually engaged in the raising of livestock. See 4 Fed. Reg. 4675-6.

The President of the Federal Land Bank of Omaha by regulations filed November 27 amended the Code of Federal Regulations with

respect to appraisal fees and partial release fees to be charged by that bank. See 4 Fed. Reg. 4692.

FEDERAL HOME LOAN BANK BOARD: Federal Savings & Loan Insurance Corporation: The Board of Trustees by regulation filed November 16 amended the Rules and Regulations for Insurance of Accounts with regard to obtaining the Corporation's approval of acquisition of bulk assets with borrowed money. See 4 Fed. Reg. 4605.

Home Owners' Loan Corporation: The General Manager and General Counsel by regulations filed October 28: (1) promulgated a procedure for granting extensions to home owners; (2) amended the Code of Federal Regulations with regard to terms of payments for Plan B sales; (3) promulgated procedures for effecting sales of real property; (4) for the disposition of deposits received from prospective purchasers; (5) authorized Regional Manager at New York to compromise personal injury claims where the settlement is less than \$150.00; (6) allowed the conversion of installment contracts into mortgages and bonds or other security instruments or properties located in Kings, Queens, Bronx, New York, Richmond and Westchester Counties in the State of New York; (7) authorized the sale of certain expendable and non-expendable property by the Director of the Purchase and Supply Section upon the prior approval of the General Manager; and (8) prescribed the method of receiving bids for the sale of same. See 4 Fed. Reg. 4432-4436.

The General Manager and General Counsel by regulation filed October 30, authorized the Regional Manager at Memphis to settle claims accruing to the Corporation under a redemption bond in Missouri. See 4 Fed. Reg. 4446.

FEDERAL HOUSING ADMINISTRATION: The Acting Administrator by regulation filed November 6 repealed S. 5018 relating to Property Improvement Loans under Title I of the Federal Housing Act. See 4 Fed. Reg. 4498.

The Acting Administrator by regulation filed November 29 amended the Administrative Rules with regard to the maximum interest rates on insured mortgages and also with regard to the amortization of fire insurance and mortgage insurance charges. See 4 Fed. Reg. 4740.

RURAL ELECTRIFICATION ADMINISTRATION: The Administrator by notices filed November 4 allocated funds for loans for projects in Vermont and

New Hampshire. See 4 Fed. Reg. 4502-3.

The Administrator by notices filed November 4: (1) changed certain project designations, and (2) reduced the amount of certain previous project allocations. See 4 Fed. Reg. 4502-3.

The Administrator by a notice filed November 21, allocated funds to projects in Pennsylvania and West Virginia. See 4 Fed. Reg. 4672.

The Administrator by a notice filed November 24, allocated funds for certain projects in Georgia and Mississippi. See 4 Fed. Reg. 4703.

The Administrator by a notice filed November 29, allocated funds for certain projects in Alabama, Mississippi and Tennessee. See 4 Fed. Reg. 4743.

UNITED STATES HOUSING AUTHORITY: The Administrator by regulation filed November 14, set forth the factors to be considered in the selection of a site. See 4 Fed. Reg. 4578.

AN EXPLANATION

To expedite holiday mailing, it is the policy of the Post Office Department not to handle any bulk mailings between December 15 and Christmas. This policy affects the December issue of the Housing Legal Digest, thus accounting for delay in its delivery.

"The Editors"

LEGAL COMMENT

SEPARATE UTILITY RATE CLASSIFICATIONS FOR SLUM CLEARANCE PROJECTS. by John L. FitzGerald, Chief of the Legal Research Section, USHA, and Member of the Editorial Board, Housing Legal Digest.

A significant proof of the fidelity of the United States Housing Authority to its legislative trust of removing the impediments to national health and good government that inhere in the slum conditions of urban and rural areas is found in its constant insistence¹* that economical utility rates be furnished to the low-rent housing projects of the public housing agencies of the several states² which receive the financial and technical assistance of the Federal Authority.

The relationship to effectual slum clearance of decreased cost of utility service to such projects appears in the resulting decrease of the rental charge³, thereby assuring to the projects a tenancy drawn from the people of small income formerly inhabiting the razed slum sections.

Abundant evidence that general costs of slum clearance have been reduced to a minimum is present in the recent comparisons made of construction costs of public housing projects with private residential building.⁴ The efforts of the United States Housing Authority in this direction are traceable to a faithful discharge of the responsibility reposed by Act of Congress.⁵ Thus, zeal for economy and spread of the benefits of the program to the greatest possible number⁶ has enabled the United States Housing Authority and the local housing agencies to cooperate in the diminution of construction costs substantially below the Congressional requirement.⁷

But the attention of the United States Housing Authority has not been focused solely on the cost of physical development of projects. Notwithstanding the lack of directional Congressional expressions, except in the general language of the Statute, there has been

*All footnotes follow at the end of the article.

a realization that the purpose of the slum clearance program can be defeated if economies won in low-cost construction are lost in excessive utility rates.

The proper approach to the problem has been determined. It is necessary to obtain the most economical possible combination of utility services which will adequately supply the primary needs of the tenants with regard to heat, light, water, cooking fuel and refrigeration. For example, gas may be used for refrigeration and cooking, electricity for lighting, and coal for heating. In order to determine the most economical combination of service, and to establish a fair charge for utilities which will be suitable to the project, the lowest possible rates must be negotiated for each type of utility service which might be used in the project. In this connection, consideration has been and is being given to the matter of petitions by the public housing agencies to the State Public Service Commissions for the purpose of bracketing public housing projects into special classifications entitling them to low rates for service. Underlying such negotiations, and particularly the petitions mentioned, are to be found certain fundamental legal concepts which, it is hoped, receive in the following paragraphs clarifying treatment insofar as they relate to low-rent housing and slum clearance projects.

The discussion which follows, though for purposes of convenience addressed to electric service, has equal application to other classes of utility service

I

Although it is well settled that public utilities, as a condition to their enjoyment of franchises which tend to be monopolistic, must serve all consumers equally, and without discrimination, the courts have consistently recognized that this requirement of uniformity extends only to members of like or similar classes. A classification of consumers based upon reasonable differences in facts and circumstances results in no unlawful discrimination.

Western Union Tel. Co. v. Call Pub. Co., 44 Neb. 326, 62 N.W. 506, 181 U.S. 92, 100 (1901); Cleveland C.C. & I.R. Co. v. Closser, 128 Ind. 348, 26 N.W. 159, 9 L.R.A. 754 (1890); Griffin v. Goldsboro Water Co., 122 N.C. 206, 30 S.E. 319 (1898); Horner v. Oxford Water & Electric Co., 153 N.C. 535, 69 S.E. 607 (1910); Wolf v. United Gas Public Service Co., ---Tex.Civ. App.---, 77 S.W. (2d) 1091 (1934); Re Wholesale Rates for Electric Power to Rural Cooperative Associations, 19 P.U.R. (N.S.) 22 (1937); Civic League v. St. Louis Water Dept., (Mo.),

P.U.R. 1917 B, 576; Postal Teleg.-Cable Co. v. Associated Press, (N.Y.), P.U.R. 1920 E, 1; Consumers' Light & Pr. Co. v. Phipps, P.U.R. 1927 C, 216 /12 Okla. 223, 251 P. 63/; see also, 4 McQuillin, Municipal Corporations, (2d ed. 1928), sec. 1829, et seq.

A clear statement of these principles was enunciated by the United States Supreme Court in *Western Union Tel. Co. v. Call Pub. Co.*, supra, at page 97: "In order to constitute an unjust discrimination there must be a difference in rates under substantially similar conditions as to service; the rate charged must be a reasonable rate; under like conditions it must render its service to all patrons on equal terms; it must not so discriminate in its rates to different patrons as to give one an undue preference over another.

"It is not an undue preference to make one patron a less rate than another where exist differences in conditions affecting the expense or difficulty in performing the services which fairly justify the difference in rates, and where it is shown that a difference in rate exists, affecting the difficulty or expense of performing the service, no cause of action arises without evidence to show that the difference in rates is disproportionate to the difference in conditions."

The North Carolina Utilities Commission (*In re Carolina Power & Light Company*, Docket No. 1663, dated August 4, 1939), in approving a separate rate classification for "public owned and operated non-profit low-rent housing projects", remarked " . . . it is an accepted principle that classification based upon reasonable differences of facts, conditions and circumstances results in no unlawful discrimination . . ."

In most jurisdictions these common law principles have been codified, as illustrated by the Unjust Discrimination Statutes of the State of Washington.⁸

"§ 10366. Unreasonable Preference. No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation, or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." (Sec. 10366 of Remington's Revised Statutes of Washington.)

"§ 10367. Unjust Discrimination. No gas company, electrical company or water company shall, directly or indirectly, or by any

special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this act, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions." (Sec. 10367 of Remington's Revised Statutes of Washington.)

The inclusion of the word "unreasonable" circumscribes the operating effect of the statutes, so that reasonable preferences, based on differences in facts and circumstances, may validly exist outside the pale of their incidence.

What is reasonable or unreasonable, as in all other branches of the law, is determined in utility law by trial of the facts.

Illinois Central R.R. v. I.C.C., 206 U.S. 441, 51 Sup. Ct. 1128 (1907); Griffin v. Goldsboro Water Co., supra; N. Y. Tel. Co. v. Siegel-Cooper Co., 202 N.Y. 502, 96 N.E. 109 (1911); City of Superior v. Douglas County Tel. Co., 141 Wis. 363, 122 N.W. 1023 (1909); Happy Hollow Club v. Nebraska Pr. Co., (Nebr.), P.U.R. 1927 B, 747; Re New York Teleg. Co., (N.Y.), P.U.R. 1928 D, 254.

II

The underlying plan of the local housing authorities generally provides for the taking of service at one point at primary distribution voltages, as the most satisfactory method of serving loads of this character.⁹ Out of this plan of operation arise several factors which materially decrease the comparative cost of supplying service to the project. The utility company is saved the customary cost of individual meters, transformers for conversion to secondary voltage, primary and secondary distribution facilities, line and transformer losses, individual meter readings, billings, collections and maintenance of meters and services on the customer's premises. The elimination of such operating costs has been held a proper ground for rate differentiation by the Supreme Court of West Virginia in Clarksburg & H. Co. v. Public Service Commission, 84 W. Va. 632, 100 S.E. 551 (1919).

The plan has received the express approval of the state utility commissions of Pennsylvania, North Carolina and Montana, for the reasons stated.¹⁰

The New York Public Service Commission expressly approved such a plan as a basis for lower rates in *Re New York Edison Co.*, 10 P.U.R. (N.S.) 244, at page 253 (1935): "It is obvious that the cost of service to the company when rendered to a number of customers through a single meter is not more than when rendered directly by the company to such customers. Indeed, the cost is less to the company, for instead of separate meters, wiring, meter readings, accounts, billing, etc., the company would have but one meter, one service, one meter reading and inspection, one account, one bill, etc. Further, bills could be collected from the landlord with more certainty and probably more promptly than from individual tenants."

The furnishing of facilities by the consumer has been considered a satisfactory basis for lower rates.

Root v. Long Island R. R. Co., 114 N.Y. 330, 21 N.E. 404 (1889); *Elks Hotel Co. v. United Fuel Gas Co.*, 75 W. Va. 200, 83 S.E. 922 (1914); *Re Fortville Teleg. Co.*, (Ind.) P.U.R. 1928 D, 685.

In accordance with the plan of taking service at a single point at primary distribution voltages, the gross charge for the energy purchased for the entire project is paid by the local housing authority. The credit of the local housing authority is thereby substituted for the credit of the individual tenants. In this connection, not only are the revenues from tenants available, as in the case of private residential developments, for the payment of operating expenses, including the cost of energy purchased, but the annual contributions from the United States Housing Authority may also be available for this purpose. The normal costs arising from the credit risk as well as the costs of collection are, therefore, decreased to a negligible item.¹¹ It has been established that such decrease in costs to the utility company is a sufficient reason for decreased rates.

Williams v. Maysville Tel. Co., 119 Ky. 33, 82 S.W. 995 (1904); *Kennebunk K. & W. Water Dist. v. Inhabitants of Wells*, 128 Me. 256, 147 A. 188 (1929); *Souther v. City of Gloucester*, 187 Mass. 552, 73 N.E. 558 (1905); *Westerhoff Bros. Co. v. Borough of Ephrata*, 283 Pa. 71, 128 A. 656 (1925); *Wolf v. United Gas Public Service Co.*, supra; *Re New York Teleg. Co.*, supra.

The utility company undoubtedly will acquire, through the low-rent housing program, a substantial number of new customers, many of whom formerly purchased no electric service whatsoever. In almost all cases

no previous ability existed either to purchase mechanical refrigerators and electric ranges, or to pay for the energy consumed under the published domestic (home-owner) rate. The tenants of the project will be drawn from the group whose income is so small that its members have been compelled to inhabit dwellings which are dilapidated, overcrowded, or lacking in ventilation, light or sanitation facilities. This group has not had the means to pay for decent shelter and attendant costs of utility services and appliances.

The projects under consideration will be well equipped with electric utilization equipment, supplied as an incident to the development of the project with funds loaned by the United States Housing Authority. The new customers will be acquired by the utility company with no outlay for promotional and new business expense. This increase in patronage and use of service, due solely to the special character of the undertaking, is a proper justification for separate classification. *Bailey v. Fayette Gas-Fuel Co.*, 193 Pa. St. 175, 44 A. 251 (1899); *Re Wholesale Rates for Electric Power to Rural Cooperative Associations*, supra. The special character of the undertaking imposes its own limitation upon the price which can be paid for utility services, and if low rates are not otherwise obtainable local housing authorities may be required to turn to self-generation for purposes of economy. To preclude a customer from installation of its own plant, rate concessions have been permitted. *Peck v. Indianapolis Light & Heat Co.*, (Ind.), P.U.R. 1916 B, 445. The addition of new customers of this character will benefit existing customers by decreasing the unit cost of service, a factor which has been recognized by the commissions in approving special rate classifications.

Glaeser, *Outlines of Public Utility Economics*, page 624; *Alpha Portland Cement Co. v. Lehigh Nav. Elec. Co.*, (Pa.), P.U.R. 1924 E, 73; *Re Green Bay Water Co.*, (Wis.), P.U.R. 1918 F, 59; *Wisconsin State Rural Electrification Coordination Committee v. District Power Company*, 16 P.U.R. (N. S.) 238 (1936).

On numerous occasions the courts and commissions have announced the rule that the volume of utility services will support a difference in treatment of customers.

Arkansas Natural Gas Co. v. Norton Co., 165 Ark. 172, 263 S.W. 775 (1924); *Bilton Machine Tool Co. v. United Illuminating Co.*, 110 Conn. 417, 148 A. 337 (1930); *Wilson v. Tallahassee Waterworks Co.*, 47 Fla. 351, 36 So. 73 (1904); *Wagner v. City of Rock Island*, 146 Ill. 139, 34 N.E. 545

(1893); *Robbins v. Bangor R., etc., Co.*, 100 Me. 496, 62 A. 136, 1 L.R.A. (N.S.) 963 (1905); *Brand, et al. v. Board of Water Com'rs. of Town of Billerica*, 242 Mass. 223, 136 N.E. 389 (1922); *McRae v. Water Supply Co. of Albuquerque*, 19 N. M. 65, 140 P. 1065 (1914); *Graver v. Edison Elec. Illuminating Co. of Brooklyn*, 126 App. Div. 371, 110 N.Y.S. 603 (1908); *Cleveland & Eastern Traction Co. v. Public Utility Commission*, 106 Ohio 210, 140 N.E. 139 (1922); *American Aniline Products v. City of Lock Haven*, 288 Pa. 420, 135 A. 726 (1917). See also: *San Ruselmo v. Marin Water & Power Co.*, (Cal.), P.U.R. 1916 F, 782; *In re Central Maine Power Co.*, (Me.), P.U.R. 1928, 285, 4 Am.Rep.Me.; *Re Red River Power Co.*, (N.D.), P.U.R. 1923 E, 534; *Kane v. Spring Water Co.*, (Pa.), P.U.R. 1919 C, 404.

Reviewing the principle and the basis therefor, the Supreme Court of Georgia observed, in the recent case of *Carmichael v. Atlanta Gaslight Co.*, 185 Ga. 34, 195 S.E. 896, at page 898: "Long-established usage and the custom of the commercial world always has been to sell a large amount of a given commodity in one parcel in a given time at a less price than a smaller quantity of the same commodity distributed in many and smaller parcels at different times. *Concord & P.R.R. Co. v. Forsaith*, 59 N.H. 122, 47 Am. Rep. 181; *Cook v. Chicago, R.I. & P.R. Co.*, 81 Iowa 551, 46 N.W. 1080, 9 L.R.A. 764, 25 Am.St. Rep. 512; *Rothschild v. Wabash, etc., R. Co.*, 92 Mo. 91, 4 S.W. 413. In *Silkman v. Yonkers Water Commissioners*, 152 N.Y. 527, 46 N.E. 612, 613, 37 L.R.A. 827, it was said: 'The objection made here is that the persons who consumed large quantities of water were not charged as much per hundred cubic feet as those who consumed a less amount. Under this statute, the question of consumption was one of the elements to be considered in determining the rates. Surely it cannot be said to be unreasonable to provide less rates where a large amount of water is used than where a small quantity is consumed. That principle is usually present in all contracts or established rents of that character. It will be found in contracts and charges relating to electric light, gas, private water companies, and the like, and is a business principle of general application . . . '"

There is a weight of legal precedent approving special classifications of service based upon quantity of consumption, the time when service is used, the duration of use, regularity and continuity of service, and the characteristics of the consumer's load and use of service.

Western Union Tel. Co. v. Call Pub. Co., supra; *Live Oak Water Users' Ass'n. v. Railroad Commission*, 192 Cal. 132,

219 P. 65 (1923); *Gallagher v. So. New England Tel. Co.*, 99 Conn. 282, 121 A. 686 (1923); *Knotts v. Nollen*, 206 Iowa 261, 218 N.W. 563 (1928); *Kolb Cleaning & Tailoring Co. v. Miss. Pr. & Lt. Co.*, 166 Miss. 136, 145 So. 910 (1933); *McRae v. Water Supply Co. of Albuquerque*, supra; *Richardson v. Greensboro*, 174 N.C. 540, 93 S.E. 3, 4, (1917); *American Aniline Products v. City of Lock Haven*, supra; *Cock v. Marshall Gas Co.*, ---Tex.Civ.App.---, 226 S.W. 464 (1920); *Wolf v. United Gas Pub. Ser. Co.*, supra; *Elks Hotel Co. v. United Fuel Gas Co.*, supra; *Shreveport v. Southwestern Gas & El. Co.*, (La.), P.U.R. 1929 E, 12; *Devils Lake Steam Laundry v. Otter Tail Power Co.*, (N.D.), P.U.R. 1928 C, 83; *Re Wholesale Rates for Electric Power to Rural Cooperative Associations*, supra; *Wisconsin State Rural Electrification Coordination Committee v. Northern States Power Company*, 17 P.U.R. (N.S.) 124 (1936).

The service requirements and characteristics of low-rent housing and slum clearance projects fit into the pattern supplied by the courts in justifying special rate classifications for utility loads.

The character of the tenancy will be such that extensive use of service should prevail without expense to or encouragement from the utility company. Tenants in the low income group usually have large families, some members of which are at home most of the time, so that almost continual daily occupancy will result in more constant use of utility facilities. Load requirements will be greater and the service more continuous than have been experienced in ordinary residential developments, since vacations and "dining out" are luxuries beyond the means of those tenants.¹² This becomes evident even from a comparison with housing projects constructed by the Federal Emergency Administration of Public Works.¹³

A high percentage of average occupancy, 99 per cent, is noted in figures submitted regarding forty-five projects constructed by the Public Works Administration. One of the remaining three PWA projects has not yet been completed, and no report is yet available for the other two, only recently completed. The above percentage reflects the loss of occupancy due to turnover when one tenant moves out or is evicted and another tenant moves in. The projects generally have very long waiting lists, and, when a project is opened for initial occupancy, it is not uncommon to have five or ten times as many applicants as there are available dwelling units.

The great housing need which gave rise to the United States Housing Authority program, together with the statutory restriction of

service to the lowest income group--never before clearly defined--indicates at least an equally favorable occupancy ratio in the case of USHA-aided projects.

While partial or complete check metering--a service which informs the local housing authority of the amount of service taken by the individual tenant--is usually provided for the purpose of cost control, billings will not be made on the basis of individual meter readings, with an exception here and there to penalize excessive individual usage. The cost of utility service, to be included in the tenant's rent, is determined by apportioning the total estimated annual cost among the various dwelling units. Thus, within reasonable limits, tenants are not discouraged from making full use of the service, and use of service is not restricted by the prospect of an increase in utility charges.¹⁴

Since the development of low-rent housing projects under the slum clearance program of the United States Housing Authority constitutes an entirely new movement in housing in this country, projects constructed with the assistance of the United States Housing Authority have been in operation for too brief a period to make available experience on load factors.¹⁵ However, figures based on the experience of one-year's actual operation of twenty-six projects constructed by the PWA demonstrate that the load factor will be appreciably higher than that usually obtained in private dwellings.¹⁶

The low-rent housing project represents a desirable type of consumer due to the fact that a large load is supplied at one central point. The project is concentrated in a comparatively small area, and is well equipped to take service. The desirability of such a customer becomes apparent when contrast is made with the frequently scattered users of service, the cost of supplying whom has the effect of increasing the average unit cost of consumption. This factor has been given its warranted significance by the courts and the commissions in upholding special rate classifications.

Arkansas Natural Gas Co. v. Norton Co., supra; Arkansas-Missouri Pr. Co. v. Brown, 176 Ark. 774, 4 S.W. (2d) 15 (1928); Gallaher v. So. New England Tel. Co., supra; Brand, et al v. Board of Water Com'rs. of Town of Billerica, supra; Cleveland & Eastern Traction Co. v. Public Utilities Commission, supra; Youngman v. Commissioners of Water Works, et al., 267 Pa. 490, 110 A. 174 (1920); Ketterlinus v. Bar Harbor & U.R. Pr. Co., (Me.), P.U.R. 1920 B, 513; Pine Lawn v. West St. Louis Water & Light Co., (Mo.), P.U.R. 1917 B, 679.

The housing project possesses the desirable attribute of acceptance of quantity service at one point, after the manner of industrial consumers, but in its case the less desirable characteristic of dependence upon the business cycle, associated with industrial consumers, is wanting. The domestic customer, unlike the industrial customer, has steadily increased his service requirements during the depression period. This stability factor is of great importance to the utility company, and doubly so as it manifests itself in the person of a prospective customer whose only practical demand upon the utility company is for a supply of energy at primary voltage.

III

It has been recognized by numerous decisions that a special rate granted by a public utility to a public institution or in the public interest is not an invalid discrimination in violation of anti-discrimination statutes. The basis of the ruling is well stated in *Guthrie Gas, Light, F. & Imp. Co. v. Board of Education*, 64 Okla. 157, 166 P. 128 (1917), at page 130:

"Where discriminations are in the interest of the public and benefit the people generally, they are usually favored by the courts. The beneficiaries thereof do not come into competition with any class of business, and no injustice is done to any one unless the discrimination increases the cost of the service to the public generally, and where the discrimination does not inure to the undue advantage of one man in consequence of some injustice imposed on another, the same is upheld where not prohibited by statute or some rule of public policy."

The doctrine was further defined in *Preston, et al v. Board of Water Commissioners of City of Detroit*, 117 Mich. 589, 76 N.W. 92 (1898), on the issue of discrimination between consumers, in furnishing water free to the public, the board of education and charitable institutions, at page 96:

"The record also shows, as will appear more fully later [that] the rates fixed are equitable and reasonable. It has already appeared that the free use of water given is only to institutions in which the city and all its citizens are interested, and, where a partial rate is charged, the recipient is a charitable institution or an educational institution in the maintenance of which the public is more or less interested . . ."

On the basis of the above principle, the following preferences have withstood the charge of discrimination against other consumers: reduced rates to the Federal government (*San Francisco v. Pacific Gas & El. Co.*, (Cal.), P.U.R. 1918 A, 506); a discount of 25 per cent on

telephone rates to clergymen, charitable institutions and the City (New York Tel. Co. v. Siegel-Cooper, supra; Re New England Tel. & Tel. Co., (N.H.), P.U.R. 1926 E, 186); a special rate to a municipality for its water supply (Inhabitants of North Berwick v. North Berwick Water Co., 125 Me. 446, 134 A. 569 (1926)); furnishing of telephones to a municipality for the use of its officers free or at a less rate than is charged the general public (State v. Peninsular Tel. Co., 73 Fla. 913, 75 So. 201 (1917)); furnishing of utilities for heating of public schools at a rate less than that charged to other consumers, in the absence of a showing that such differential deprives the utility of a just return on its investment (Guthrie Gas, Light, F. & Imp. Co. v. Board of Education, supra); furnishing of water by a city, owning its own water works, free for city and charitable purposes (Twitchell v. City of Spokane, 55 Wash. 86, 104 P. 150 (1909)); free service to a municipality for lighting public buildings, offices and rooms (Pub. Ser. Elec. Co. v. Bd. of Pub. Util. Com'rs., etc., 87 N.J.L. 123, 93 A. 701 (1915)); furnishing of gas at a lower rate to institutions supported by public taxation and donations (Re Cheyenne Lt., Fuel & Pr. Co., (Wyo.), P.U.R. 1932 A, 136); to a municipality (Willcox v. Consolidated Gas Company, 212 U.S. 19, 29 Sup. Ct. 192 (1909)) than to general customers; donation of water by a city to a state school (Fretz v. City of Edmond, 65 Okla. 262, 163 P. 800 (1917)); furnishing of water free to a church to operate an organ (City of Memphis v. Browder, ---Tex. Civ. App. ---, 174 S.W. 982 (1915)); electric current at special rates to rural cooperative associations (Wisconsin State Rural Electrification Coordination Committee v. Northern States Power Company, supra; Re Broad River Power Company, (S.C.), 11 P.U.R. (N.S.) 66 (1935)); and a telephone company maintaining without charge telephones in the public offices of the city (City of Superior v. Douglas County Telephone Co., supra). It was stated by the court in case last cited, at page 1027:

"In case of the contract being between a private corporation and the state or other public corporation whatever advantage the particular customer has over general customers obviously inures to the benefit of the latter in the aggregate. In other words, in the ultimate there is no discrimination which is inimical to the public good and hence no violation of public policy."

The legislative determination¹⁷ that the elimination of slums through construction of safe and sanitary dwelling accommodations for persons of low income constitutes a public use has been upheld by the highest court of every state in which the matter has been questioned.

In re Opinion of the Justices, 235 Ala. 485, 179 So. 535 (1938); Housing Authority of the County of Los Angeles v.

Dockweiler, ---Calf.---, 94 P. (2d) --- (October 11, 1939); Marvin v. The Housing Authority of Jacksonville, Fla., 133 Fla. 590, 183 So. 145 (1938); Williamson v. Housing Authority, etc., of Augusta, et al., 186 Ga. 675, 199 S.E. 43 (1938); Krause, et al v. Peoria Housing Authority, et al., 370 Ill. 356, 19 N.E. (2d) 193 (1939); Edwards, et al v. Housing Authority of the City of Muncie, et al, (Ind.), 19 N.E. (2d) 741 (1939); Spahn v. Stewart, 268 Ky. 97, 103 S. W. (2d) 651 (1937); State ex rel. Porter v. Housing Authority of New Orleans, 190 La. 710, 182 So. 725 (1938); Allydonn Realty Corp. et al. v. Holyoke Housing Authority, (Mass.) - (November 21, 1939); Rutherford v. City of Great Falls, et al., 107 Mont. 517, 86 P. (2d) 656 (1939); State ex rel. Helena Housing Authority v. City Council of Helena, (Mont.), 90 P. (2d) 514 (1939); New York City Housing Authority v. Muller, supra; Wells v. Housing Authority of Wilmington, 213 N.C. 744, 197 S.E. 693 (1938); State of Ohio, ex rel. Ellis v. Sherrill,--(June 21, 1939); Dornan v. Philadelphia Housing Authority, et al., 331 Pa. 209, 200 A. 834 (1938); McNulty v. Owens, 188 S.C. 377, 199 S. E. 425 (1938); Knoxville Housing Authority v. City of Knoxville, et al., (Tenn.), 125 S.W. (2d) 1085 (1939); Chapman v. The Huntington, W.Va., Housing Authority, et al., (W. Va.), (decided June 13, 1939). Laret Invest. Co. v. Dickman, et al. Sup.Ct. of Missouri, 12/5/39. Opinion 36-925.

The statement of the Kentucky Court, in describing the public use being served by the program, is typical of the various judicial expressions in this regard: "The essential purpose of the legislation is not to benefit that class /slum dwellers/ or any class; it is to protect and safeguard the entire public from the menace of the slums." Spahn v. Stewart, supra, at page 657.

In the cases in which local housing authorities have applied for a separate rate classification the State Public Utilities Commissions have given due weight, in approving such applications, to the fact that the authorities are public bodies carrying out a state governmental function.¹⁸

The fundamental nature of the housing program of the local housing authority, as well as the purpose out of which it arises, distinguishes it as an instrument of public welfare, the benefits of which rest within the general public through decrease in crime costs and conditions, decrease in sanitation, fire, and disease expenses, and the provision of decent, safe, and sanitary dwelling accommodations for the underprivileged.¹⁹ By reason of the statutory limitation making proj-

ects available for occupancy only by families in the lowest income groups for which private enterprise is not able to build, there is no competition with private businesses or interests.²⁰ On the basis of the acts of the state legislatures passed for the purpose of creating non-profit housing agencies for the administration of the slum clearance program, with such incidents as eminent domain and Federal and State tax exemption, common only to public institutions, a clear distinction arises between the low-rent housing projects in question and the ordinary apartment developments constructed for profit and open for occupancy to the general public.

FOOTNOTES

- ¹ The word "insistence" is advisedly used, despite the fact that the United States Housing Authority program is essentially decentralized (Section 9, United States Housing Act of 1937, as amended, 50 Stat. 388, 52 Stat. 820, 42 U.S.C., Sec. 1401, et seq.). Under Section 10 (a) of the United States Housing Act, annual contributions (explained in the text, *infra*) may not be made by the United States Housing Authority except to achieve and maintain the low rent character of the housing projects. Low-rent housing is restricted by Section 2(1) of the Act to dwellings within the reach of families of low income, who, by Section 2(2), are defined as families in the lowest income group who cannot afford to pay enough to cause private enterprise to supply them with adequate dwelling facilities. A further limitation is imposed by Section 2(1) providing that the total net income of such families must not exceed five times (six times in the case of large families) the rental (including the value or cost to them of heat, light, water and cooking fuel) of the dwellings to be furnished such families. Logically, therefore, only projects housing the lowest income group are eligible for United States Housing Authority assistance by way of annual contributions, and these persons are not in a position to add to a minimum rent figure a disproportionate utility charge.
- ² Enabling legislation providing for the creation of local housing authorities has been adopted in the following states and territories: Alabama, Acts 1935, No. 56; amended Acts 1935, No. 445; Arizona, Acts 1939, Ch. 82; Arkansas, Acts 1937, No. 298; California, Chap. 4, Laws, Spec. Sess. 1938; Colorado, Acts 1935, Ch. 132; amended, Acts 1937, Ch. 172; City Housing Law, Acts 1935, Ch. 131; amended, Acts 1937, Ch. 171;

- Connecticut, Gen. Statutes 1936, Ch. 3;
Delaware, Acts 1934, Ch. 16;
Florida, Laws 1937, Ch. 17981;
Georgia, Laws 1937, No. 411;
Hawaii, Sess. Laws, 1935, No. 190;
Idaho, Laws 1939, Ch. 234;
Illinois, Acts 1933-34, 3rd Sp. Sess., H.B. No. 5; amendatory and supplementary legislation, Acts 1937, S.B. 408, S.B. 409, S.B. 410 and S.B. 411;
Indiana, Acts 1937, Ch. 207;
Kentucky, Acts 1934, Ch. 113;
Louisiana, Acts 1936, No. 275;
Maryland, Acts 1933, Ex. Sess., Ch. 32; Acts 1937, H.B. 69 and 70;
Massachusetts, Acts 1935, Chs. 449 and 485;
Michigan, Acts 1933, Ex. Sess., No. 18; amended and supplemented, Acts 1935, No. 80, and Acts 1937, No. 265;
Mississippi, Reg. Sess. 1938, H.B. 694;
Missouri, Laws 1939, H.B. 6;
Montana, Acts 1935, Ch. 140;
Nebraska, Acts 1935, Ch. 29; amended and supplemented, Acts 1937, L.B. 572 and L.B. 576;
New Jersey, Ch. 14A of Title 55, Public Housing, Rev. Statutes of N.J.;
New Mexico, Laws 1939, Ch. 193;
New York, Acts 1934, Ch. 4; Acts 1935, Ch. 310;
North Carolina, Public Acts 1935, Ch. 456;
North Dakota, Acts 1937, Ch. 102;
Ohio, Acts 1933, 1st Sp. Sess., H.B. 19; amended and supplemented Acts 1937, H.B. 574; H.B. 575; H.B. 576 and amended H.B. 788;
Oregon, Laws 1937, Ch. 442;
Pennsylvania, Acts 1937, Nos. 265, 232 and 359;
Puerto Rico, Acts 1938, No. 126;
Rhode Island, Acts 1935, Ex. Sess., Ch. 2255;
South Carolina, Acts 1934, No. 783; amended 1935, Nos. 301 and 345; amended and supplemented, Acts 1937, S.B. 333; S.B. 334; S.B. 336;
Tennessee, Public and Private Acts 1935, 1st Sp. Sess., Ch. 20; Private Acts 1935, Ch. 615; amended and supplemented, Public Acts 1937, Ch. 234, Ch. 225, Ch. 214, Ch. 183; Private Acts 1937, Ch. 900;
Texas, Laws 1937, H.B. 321, as amended, Laws 1937, 2d Called Sess., H.B. 102;
Vermont, Acts 1937, No. 231;
Virginia, Laws 1938, H.B. 227;
Washington, Laws 1939, Ch. 23;

West Virginia, Acts 1933-34, 2d Ex. Sess., Ch. 93;
Wisconsin, Acts 1935, Ch. 525; amended Laws 1937, Sp. Sess., Ch. 15.

- 3 The importance of the cost of utility service, which forms a part of the rent paid by the tenant, as a factor in the attempt to rehouse the lowest income group, is demonstrated by statistics compiled by the United States Housing Authority showing that local housing authorities throughout the country have succeeded in so reducing shelter rents that the charge for utility services, unless special low rates are obtained, will approximate from one-third to one-half (and in some cases will equal or exceed) the shelter rental per family dwelling unit. The United States Housing Authority, as a condition to making annual contributions to an authority, is required to ascertain that rents will be low enough to serve the lowest income group. The most recent figures released by the Research and Statistics Division of the United States Housing Authority show that as of November 27, 1939, for the fourteen USHA-aided projects for which final rent and income limits have been approved, the average shelter rent per room per month is \$2.85, exclusive of utility charges. Similarly, the average shelter rent per family dwelling is \$11.48. The estimated average family yearly income, as obtained from the averages for the fourteen projects, is \$747.

With shelter rent at such a low figure in order to reach indigent families, it is obvious that utility charges must be established at rates low enough (with due regard, of course, to any incremental costs incurred by the utility company), so that the total charges for shelter rentals and utilities will be within the financial reach of the families now living under unsafe and insanitary conditions.

- 4 In a statement on December 3, 1939, Nathan Straus, Administrator of the United States Housing Authority, pointed out that the average net construction cost for USHA-aided projects under construction in 67 cities on November 1, 1939, was 22 per cent lower than privately financed dwelling construction as revealed in data issued by the United States Bureau of Labor Statistics. The B.L.S. Permits average of \$3,501 was compared with the average Project Net Construction Cost of \$2,747, showing a difference of \$754.
- 5 Section 15(5) of the Act sets out definite construction cost limitations. Under this subsection, the average construction cost of a project may not exceed that of private residential construction.

- 6 To achieve the purpose for which the United States Housing Authority was created, it is necessary that the total charges for rent and utility services be low enough so that those now living under unsafe, insanitary or overcrowded housing conditions can afford to live in the projects constructed. For low-rent housing projects which meet these requirements, the United States Housing Authority is permitted to lend not in excess of ninety per cent of the cost of the project and to furnish annually over a period of sixty years contributions each of which, together with the local contributions mentioned below, may be sufficient in amount, when added to the rent the slum dwellers can afford to pay, to repay capital and running costs of the projects, but each of which may not exceed approximately three and one-fourth per cent of the cost of the project. In turn, the local housing authority must raise ten per cent of the development cost and must obtain local contributions annually, in the form of cash, tax exemptions or remissions, in the amount of twenty per cent of the yearly contribution made by the United States Housing Authority. Obligations and income of the local housing authority are exempt from Federal taxation. (United States Housing Act of 1937, *supra*, Sections 9, 10, 5.)
- 7 Under Section 15(5) the cost of dwelling facilities is limited to \$4,000 per unit (\$5,000 in cities of more than 500,000 inhabitants) or to \$1,000 per room (\$1,250 in cities of more than 500,000 inhabitants).
- 8 See also: Act 6326, § 17(b), General Laws of California (1931); Chapter 111-2/3, § 32, Illinois Revised Statutes (1939); §§ 3833 and 3893, Revised Code of Montana (1935-1939); § 42:3-1, Revised Statutes of New Jersey (1937); Laws of 1933, Chap. 307, Sec. 6, North Carolina Code of 1935, § 1112(6); Title 66, § 492, Purdon's Pennsylvania Statutes (1936); § 2564, West Virginia Code of 1937.
- 9 The Public Service Commission of Montana (In re Housing Authority of the City of Butte, Montana, November 6, 1939) stated, in its order approving a separate rate classification for public housing projects, that this appeared to be the most reasonable, satisfactory and economical method of serving loads of this character.
- 10 In re Metropolitan Edison Co., 29 P.U.R. (N.S.) 260, (Pa., July 18, 1939); In re Carolina Power & Light Co., *supra*; In re Housing authority of the City of Butte, Montana, *supra*.

- 11 In re Carolina Power & Light Company, supra; In re Housing Authority of the City of Butte, Montana, supra.
- 12 In re Carolina Power & Light Company, supra.
- 13 The Public Works Administration, predecessor of the United States Housing Authority in this field, constructed and operated its own projects. No low-rent mandate was imposed upon such projects by Congress.
- 14 In re Housing Authority of the City of Butte, Montana, supra; In re Carolina Power & Light Company, supra.
- 15 The load factor has been defined as "the ratio of the average use of plant capacity to the maximum requirement. Thus, suppose one company has a maximum demand of 100,000 kilowatts, the highest point during a day, while the average demand for the day is 25,000 kilowatts. Another has the same maximum of 100,000 kilowatts, but an average demand of 80,000 kilowatts. In the first case there is an average daily utilization of only 25 per cent of the plant maximum, which is a low load factor. In the second, there is the same maximum demand but an average of 80 per cent, which is a high load factor. The load factor represents the degree of utilization of electric facilities and is used as an index of efficiency in operation." Bauer, Effective Regulation of Public Utilities, pp. 286, 287.
- 16 Statement filed by the Raleigh Housing Authority, Raleigh, North Carolina, with the North Carolina Utilities Commission, on July 29, 1939, pp. 10-14.
- 17 Indicative of the averments contained in the state housing acts is the following excerpt from the California Housing Authorities Law: "Section 2. Finding and Declaration of Necessity. It is hereby declared: (a) that there exist in the State insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary and unsafe accommodations; that within the State there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in

in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the State and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; (b) that these slum areas can not be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (c) that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of State concern; that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination."

18 In re Metropolitan Edison Co., supra; In re Carolina Power & Light Co., supra; In re Housing Authority of the City of Butte, Montana, supra. See also: Carpenter v. Penn Electric Company, Complaint Docket No. 12557, Pennsylvania Public Service Commission, (noted in Public Utilities Fortnightly, November 23, 1939, page 714), extending the same reasoning to rural cooperative associations.

19 Slum conditions are recognized as having a very definite effect upon the health and general welfare of the citizens of the United States. (Report of the United States Senate Committee on Education and Labor on S. 1685, July 23, 1937, page 7 (Report No. 933); see also: Senate Report No. 666, 66th Congress, 3d Session; Senate Report No. 829, 66th Congress, 3d Session.) Surveys undertaken in various cities indicate in every case the concentration of disease, infant mortality, juvenile delinquency, economic and social maladjustment, crime and death in slum areas. ("Relation Between Housing and Health", by Rollo H. Britten, Senior Statistician, U. S. Public Health Service, 44 U.S. Pub. Health Rep. 1301, (1924); "Recent Trend in American Housing", by Rollo H. Britten, U. S. Pub. Health Rep., November 2, 1934, Vol. 49, page 1301, reprinted in

Reprint No. 1656; Report of the New York Commission on Housing and Regional Planning, Legislative document No. 66 (1936)). The slums represent an enormous drain upon local treasuries as a result of inordinate fire, police, hospital, and public welfare calls of all kinds. (New York City Housing Authority v. Muller, supra.)

- ²⁰ Jones v. City of Portland, 243 U.S. 217, 38 Sup. Ct. 112 (1917); Springfield Gas Co. v. Springfield, 257 U.S. 66, ---Sup. Ct.---- (1921); Nebbia v. New York, 291 U.S. 502, 54 Sup. Ct. 505 (1934); Puget Sound Power and Light Co. v. Seattle, 291 U.S. 619,---Sup. Ct. --- (1934); Williamson v. Housing Authority, etc., of Augusta, et al., supra.

RESTRAINT OF TRADE IN BUILDING. From an address by Thurman Arnold, Assistant Attorney General of the United States, before the New York Building Congress.

"The tradition of free and independent enterprise is even stronger and more vital in this country than it was a short time ago. In support of that belief I cite the fact that Congress today has for the first time in the history of America shown signs of providing an organization adequate to regulate the economic traffic of the nation to the end that the channels of trade shall be kept free from arbitrary obstructions.

"In the building industry we have a series of restraints, protective tariffs, and aggressive combinations which has practically stopped progress. The building industries are unique in that they have frankly given up half of their job. They take for granted that it is impossible, as things are today, for them to build houses without public aid and sell them cheaply enough that the lowest paid half of the population can afford to live in them. This has been true for four reasons: that financing costs were high, that taxes were high, that land was high, and that the costs of construction were high. Recently a broad Federal and state program has undertaken to provide adequate cheap credit and even subsidies. But the easing of this difficulty has afforded an opportunity for costs of construction to go still higher.

"Unreasonable restraints of trade are, in my opinion, the most

conspicuous reason for high construction costs. They appear at every level of the building industry.

"Can the antitrust laws deal with the situation? My answer is an emphatic 'yes', as far as the law itself is concerned. I frankly admit that they have not dealt with it adequately in the past in spite of the fact that throughout the entire history of the Antitrust Division about one-quarter of the cases have been in the building industry. The reason for that failure, however, is not in the law. It rests on two obvious principles. First, you cannot police America with a corporal's guard. And second, you cannot attack a tangle of goods and services all of which contribute to a final product--the house--by hit or miss methods. I am convinced that if we deal in a coordinated way with the entire fabric of restraints from the production of materials through to the final work of labor, we can get cheaper houses by freeing the industry.

"We must use both the civil and criminal processes. The criminal process on a wide scale will protect the law abiding business man from his aggressive neighbors. The civil process will consolidate those gains.

"Mr. Sprague, of Harvard, has told me that a concerted drop in prices in the heavy industries would result in increased profits through increased volume. I have talked with some of the leaders in those industries about the possibility. At present, they tell me, no one can obtain any substantial increase in volume by dropping the price of his product because it will be absorbed elsewhere in the contractor's profits or in labor's reward. One large manufacturer said, 'I am at the mercy of my dealers'. Similarly, building trades labor thinks that to reduce labor costs is not to create more employment, but to enhance the contractor's profits; and contractors see no benefit in reducing their own charges when labor and materials can take up the slack. If we proceed on a broad front we can protect those who see the necessity of a simultaneous price drop. We can open the door for substantial price reductions in the heavy industries. We can carry on the effect of that drop by liberating the real competing contractor. And finally we can say to labor, 'You can get the same thing that the heavy industries are getting: a greater annual income, based upon having more work to do during the year, without need to stretch the hours of work and the rate of pay on each particular job'. Without such assurance it is certainly not fair to expect labor to take the brunt. It is neither fair nor practical to deal with any element of the situation without dealing with all of them.

"The antitrust laws do not fill the entire picture. They simply clear away the underbrush. The success of our efforts will be

measured by increasing volume of construction. Therefore, coordination of state and federal agencies with an antitrust program is a necessity. If a nation-wide antitrust enforcement program restores competition in some cities, money and credit both state and federal should be used to create volume in those cities where the artificial price controls have been eliminated."

PUBLIC HOUSING RESOLUTION. Adopted by the National Institute Of Municipal Law Officers.

The following resolution pertaining to Public Housing was unanimously adopted at the recent annual conference of the National Institute of Municipal Law Officers held in Washington, D. C.:

"Public Housing

"WHEREAS, The Committee on Housing of the National Institute of Municipal Law Officers recommends the following Resolution to the Resolutions Committee for presentation to the general assembly of the Institute, and

"WHEREAS, The Resolutions Committee recommends that said Resolution should be adopted, now therefore

"BE IT RESOLVED, That the National Institute of Municipal Law Officers, assembled in its Annual Meeting in the City of Washington, D. C., on November 29, 1939, respectfully recommend to the Congress of the United States the passage of Senate Bill 591, proposing the expansion of the public housing program under the United States Housing Authority by an increased authorization for loans and subsidies.

"THAT the public housing program, in its contribution of one-eighth of the total volume of residential construction, public and private, in United States during 1939 has provided employment for thousands of workers in the depressed building industries and has measurably contributed to the recovery of the building supplies, transportation, related industries and the volume of general business throughout the NATION. To that extent, the relief problems of the cities and towns of the land have been reduced.

"THAT the clearance of slums and blighted neighborhoods has and will, through an augmented housing program, further reduce crime and juvenile delinquency, curtail certain diseases, and by improving

the health of all citizens, substantially contribute to the general welfare of the Nation's communities. The continued elimination of slums, and the eradication of substandard dwellings, together with the erection of public housing developments, not only will increase property values and the national wealth but has already marked the path to proper city planning and envisioned the healthful and socially adequate City of Tomorrow.

"BE IT FURTHER RESOLVED, That the completion and opening of the first housing projects in various states has demonstrated the efficiency and value of the public housing program. Low construction costs have been maintained and the lowest income groups have been rehoused in the participating cities and towns. The drive to rehouse the lowest third of the Nation, in the interests of the Republic's social welfare and economic enrichment, should be extended.

"AND that a copy of this Resolution be presented to the respective clerks of the Senate and the House of the Seventy-sixth Congress, to Senators Robert F. Wagner of New York, and Elbert D. Thomas of Utah, Chairman of the Senate Committee on Education and Labor, and to Congressman Henry B. Steagall of Alabama, Chairman of the House Committee on Banking and Currency, and to the Chairman of the House Rules Committee, Adolph J. Sabath of Illinois."

TAXES--MICHIGAN GETS 617,897 PARCELS OF LAND. Freehold,
October 15, 1939.

Under provisions of Michigan's so-called "scavenger sale law," passed in 1937 and amended at the last legislative session, the state, in May 1938, took over 617,897 parcels of land in the southern part of Michigan, owners of which owed state and county taxes levied in 1935 and previous years. Until October 1, 1939, owners could redeem their parcels by paying the original amount of taxes, plus a 6 per cent collection fee. After that date, full interest and penalties were added, the final date for redemption being November 2. On the morning of November 3 the State Land Office Board is to be given absolute title and full possession of those unredeemed.

Auction sale of these properties is scheduled to start February 13, 1940, and the law provides that no parcel shall be sold for less than 25 per cent of its 1938 assessed valuation--in other words, the figure at which bidding is to start. But, while anyone may bid for these parcels, the owner or any other person who was a party

of interest in the parcel at the time of the 1938 sale, will have the right to meet the successful bid within 30 days after the bid is accepted.

Also, if a party of interest offers to meet the high bid within 24 hours after the auction sale, he may, with permission of the State Land Office Board, pay the amount specified over a ten-year period, with 6 per cent interest per year on unpaid balances.

SELECTED REFERENCES

(The following list of current references, while by no means exhaustive, indicates the availability of material concerning legal problems regarding housing, and related documents.)

CIVIL PROCEDURE

Rules of civil procedure for District Courts, with Index and Notes, Rules of civil procedure for District Courts, adopted by Supreme Court, with Index to Rules prepared by staff of Advisory Committee on Rules for Civil Procedure, also Notes to Rules as prepared under direction of Advisory Committee on Rules for Civil Procedure appointed by Supreme Court. 1939. xxi/313p. (S. Doc. 101, 76th Cong., 1st Sess.) Includes Bibliography of articles on Federal rules of civil procedure.) Cloth, \$1.00.

CONTRACTS

Change in Principal Contract - Release of Surety, 39 Col. L.R. 1254-6.

DEFICIENCY JUDGMENTS

Constitutionality of New York Deficiency Judgment Act, 39 Col. L.R. 1227-32.

HOUSING-Building Restrictions

Equitable Servitudes - Declaratory Judgments - Continued Depression of Building Costs held insufficient basis for Declaratory Relief from Minimum Cost Building Restriction, 53 Harv. L.R. 139.

-Dwellings

Minimum construction requirements for new dwellings located in district covered by Baltimore Insuring Office, Federal Housing Administration, Baltimore, Md. Revised Aug. 15, 1939. 1939. (1)/24/(1) p. il. (FHA form 2311). FL2.11:M36.

Minimum construction requirements for new dwellings located in southeastern district of Texas, covered by Houston Insuring Office, Federal Housing Administration, Houston, Tex. Revised Aug. 15, 1939.

(1)/26p. 11. (FHA form 2333). FL2.11:T31.

-General

Amendments of 1939 to United States Housing Act, hearings, 76th Congress, 1st Session, on S. 591, June 26-July 13, 1939. 1939. v/442 p. 11. Paper 45¢ Y4.B22/1:H81/7.

Consideration of S. 224 (2240), report to accompany H. Res. 281 (for consideration of S. 2240 to provide for national census of housing); submitted by Mr. Nelson. July 29, 1939. 1p. (H. rp. 1419, 76th Cong. 1st Sess.) Paper, 5¢.

Public Housing in America (New Book) compiled by M. B. Schnapper. Pub. by The H. W. Wilson Company, New York City, 369 pages, \$1.25.

Public Housing Laws - prepared by Joshua S. Chinitz and Edith B. Drellich, in cooperation with the Committee on Laws and Administration of the Citizens Housing Council of New York - 60 pages mimeographed. Price 50¢. Citizens Housing Council of New York, Inc., 470 Fourth Avenue, New York City.

United States Housing Act of 1937, as amended, and provisions of other laws and Executive documents pertaining to United States Housing Authority. (1939). cover title, v/69 p. (Amendments are identified in footnotes, which also contain superseded portions of the original act. Provisions of other laws and Executive documents pertaining to United States Housing Authority appear in the appendix.) FW3.5:H81.

-Loans

Amendments of Regulations issued by Administrator in connection with property improvement loans under Title 1 of National Housing Act, as amended, effective Sept. 1, 1939; (effective Sept. 25, 1939). (Sept. 15, 1939) 3 leaves, narrow f. (Processed). FL 2.6:L78/939/amdt.

Property improvement loans under Title 1 of National Housing Act, as amended 1939, regulations effective Sept. 1, 1939. (Aug. 24, 1939) (1)/21 leaves 4 (FHE 1, revised 9-1-39). (Processed). FL2.6:L78/939.

-New York

Municipal Corporations - Housing - Compulsory Repair - Validity of New York Law Giving City Prior Lien on Property for Cost of Compulsory Repairs. 8 G. W. L. Rev. 116.

MISCELLANEOUS

- Federal Home Loan Banks. Consideration of H.R. 6971, report to accompany H.Res. 280 (for consideration of H.R. 6971, to amend Federal Home Loan Bank Act, Home Owners' Loan Act of 1933, Title 4 of National Housing Act, and for other purposes); submitted to Mr. Sabath. July 28, 1939. 1p. (H. rp. 1413, 76th Cong., 1st Sess.) (H.R. 6971 changes name of Federal Savings and Loan Insurance Corporation to Federal Savings Insurance Corporation.) Paper, 5¢.
- Federal Home Loan Bank Review, v. 5, no. 11; Aug. 1939 (1939) cover title, p. 325-364, il. 4 (Monthly.) Paper, 10¢ single copy, \$1.00 a year; foreign subscription, \$1.60. FL 3.7:5/11.
- Consideration of H.R. 7120, report to accompany H.Res. 286 (for consideration of H.R. 7120, to provide for construction and financing of self-liquidating projects); submitted by Mr. Sabath. July 31, 1939. 1p. (H. rp. 1424, 76th Cong., 1st Sess.) Paper, 5¢.
- Construction and financing of self-liquidating projects, hearings, 76th Cong., 1st Sess. on H.R. 7120, July 13-26, 1939. 1939. iii/403 p. il. Paper, 35¢. Y4.B22/1:P94/2
- Reconstruction Finance Corporation
Report of Reconstruction Finance Corporation, May 1939, letter from Chairman, Reconstruction Finance Corporation, transmitting report of activities and expenditures for May 1939, of Reconstruction Finance Corporation, and statement of loans and other authorizations made during month. June 29, 1939.
- Savings and Loan Associations
Cyclopedia of Federal Savings and Loan Associations. by Henry S. Rosenthal and Robert B. Jacoby. Published by American Building Association News Co., Cincinnati, Ohio. \$12.50. (Cyclopedia on many of the practices prescribed for Federal savings and loan associations, with rulings and opinions interpreting various provisions of charter and bylaws.)

MORTGAGES-Foreclosures

Non-farm real estate foreclosures. June, 1939. (1939). 37(8) leaves, il. 2 pl. 4 (Division of Research & Statistics). (Monthly. Processed). FL 3.8:939/6.

-General

Rights of Mortgagee paying delinquent taxes to protect security denied

restitution from Grantee who did not assume mortgage. 53 Harv. L.R. 144.

-Insurance

Property standards (requirements for mortgage insurance under Title 2 of National Housing Act): pt. 6, Minimum requirements for district covered by Boise Insuring Office, Federal Housing Administration, Boise, Idaho, Revised Oct. 1, 1939. 1939. 11/8p. (Circular 2; FHA form 2247). FL2.4:2/pt. 6, Idaho/939.

-Same: pt. 6, Minimum requirements for Iowa, Des Moines, Iowa. Revised Sept. 15, 1939. 1939. 11/7p. (Circular 2; FHA form 2271.) FL2.4:2/pt. 6, Iowa/939.

-Subdivision standards for insurance of mortgages on properties located in undeveloped subdivisions, title 2 of National Housing Act. Revised Sept. 1, 1939. 1939. 11/18 p. (Circular 5; FHA form 2059.)

Property Standards (requirements for mortgage insurance under Title 2 of National Housing Act); pt. 6, Minimum requirements for Colorado, Denver, Colo. Revised August 15, 1939. 1939. 11/8 p. (Circular 2; FHA form 2233). FL2.4:2/pt. 6, Colo./939.

-Same: pt. 6, Minimum requirements for District of Columbia, Washington, D.C. Revised Sept. 1, 1939. 11/8 p. (Circular 2; FHA form 2259) FL2.4:2/pt. 6, D.C./939.

-Same: pt. 6, Minimum requirements for Massachusetts, Boston, Mass. Revised Sept. 1, 1939. 11/8p. (Circular 2; FHA form 2259). FL2.4:2/pt.6, Mass./939.

-Same: pt. 6, Minimum requirements for Utah, Salt Lake City, Utah. Revised Aug. 15, 1939. 1939. 11/8p. (Circular 2; FHA form 2232). FL2.4:2/pt.6, Utah/939.

-Same: pt. 6, Minimum requirements for Vermont, Burlington, Vt. Revised Aug. 15, 1939. 1939. 11/8p. (Circular 2; FHA form 2254) FL2.4:2/pt.6, Vt./939.

-Insured Mortgage Portfolio

v. 4, no. 3; Sept. 1939 (1939) cover title, 28 p. 11. 4. (Monthly) Paper 15¢. single copy, \$1.50 per year; foreign subscription \$2.10. FL 2.12:4/3.

v. 4, no. 2; Aug. 1939 (1939). cover title, 28 p. 11. 4 (Monthly) Paper 15¢ single copy, \$1.50 per yr.; foreign subscription \$2.10. FL2.12:4/2

PROPERTY-Title

Harvey on Title Closing (New Book); Contracts, Deeds and Mortgages by David C. B. Harvey; New York, Clark Boardman Company, Ltd., 1939, pp. XXVI, 388. Book note in 39 Col. L.R. 1281.

· HOUSING · LEGAL DIGEST

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Rec'd JAN 29 1940
DEPT. ARCHITECTURE.

Increasing interest in the opportunity provided for home ownership among families of modest incomes by the facilities of Title I of the National Housing Act has led the Federal Housing Administrator to establish separate regulations governing loans for this purpose. The new regulations differ in important respects from those previously issued under this Title and it is believed that the changes which have been made will lend new impetus to the construction of low cost homes.

ABNER H. FERGUSON,
First Assistant Administrator
and General Counsel,
FEDERAL HOUSING ADMINISTRATION

See LEGAL COMMENT for New Loan Regulations.

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

HOUSING LEGAL DIGEST

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The Editors of the HOUSING LEGAL DIGEST endeavor to present as completely and impartially as possible material relating to housing legal problems; but they assume no responsibility for opinions expressed herein and no inference may be drawn as to their agreement or disagreement with viewpoints expressed.

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DECISIONS

ASSESSMENTS

(HOLC and J. W. Whiteaker and Laura P. Whiteaker, his wife, v. Paving District No. 75. Supreme Court of Arkansas)
Section 7302 of Pope's Digest of Arkansas Statutes authorizes the apportionment of future assessment of benefits levied by Improvement Districts but does not authorize apportionment of assessments due and unpaid at time of institution of suit for apportionment.

In November 1938, HOLC and Whiteaker instituted suit against Paving District No. 75 to require the apportionment of the assessment of benefits between pieces of property in the paving district according to the then ownership thereof. The suit was instituted under Section 7302 of Pope's Digest of the Arkansas statutes which provides:

"Section 7302. Partition of Assessments. Wherever lands, or other real property, in an improvement district are assessed in one body, and are at the time owned in separate parcels, or where the ownership subsequently becomes divided, any owner of any part of said property may apply to the chancery court of the county where the lands, or some part thereof, lie, making defendants in his suit the other parties interested in said lands; and, thereupon, it shall be the duty of the court to partition the assessment against said lands amongst the several owners thereof, as equity and good conscience may require. General Acts, March 27, 1919, p. 311."

The Chancellor held that the unpaid balance of future assessment of benefits should be partitioned but that the annual installments which had already become due and payable should not be partitioned. On appeal, the Supreme Court of Arkansas affirmed the holding of the Chancellor and in so doing said:

"The only question involved here is, as stated by appellant, 'Did the chancellor correctly interpret and construe Section 7302 of Pope's Digest of the Statutes of Arkansas when he held that the unpaid balance of assessments should be partitioned between the several owners of the south 104 feet of the said Lots 7 and 8 and the lien of said assessments fixed in accordance with such proration but that he could not

partition the annual installments theretofore extended against the south 104 feet of said Lots 7 and 8 for the years 1934, 1935, 1936, 1937 and 1938 and that they should be paid as levied and extended?'

"It is our view that the chancellor correctly interpreted and applied the provisions of the above section of the statute.

"We find no authority in this section for dividing the annual tax assessments against the south 104 feet of Lots 7 and 8, which had become due and had not been paid at the time the suit in question was filed by appellants, and we think the only authority conferred under the act relates to subsequent and future assessments against the property in question.

"We cannot agree with appellants' view that 'assessment' as used in the statute means not only the assessment of future benefits but all past due taxes as well. It occurs to us that if the legislature had intended that past due and unpaid taxes should be partitioned after the property had become delinquent, it would have been a very easy matter for it to have said so in the act. This, clearly, it did not do.

"We think the clear intent of the act is prospective, and not retroactive, as to the duty it imposes on the court to partition the assessments.

"In the instant case the word 'assessment' as applied to improvement districts means the assessment of benefits and it is that assessment which is to be partitioned in a case of this kind, since it is the basis for the taxes that are extended and collected from year to year. The partitioning of the assessment of benefits against any piece of property automatically partitions all future taxes only on that property.

"On November 18, 1937, when appellant, Home Owners' Loan Corporation, filed its suit below, the annual installments on the assessment of benefits for the years 1934, 1935, 1936 and 1937 were due and unpaid on the entire south 104 feet of Lots 7 and 8 in question. The lien for same had attached to this property and appellee district had the right to demand that these past due installments be paid to it and that they were not subject to partition under divided ownership between the Whiteakers, who had acquired the north 50 feet of the south 104 feet of said lots, and other appellant, the Home Owners' Loan Corporation, which had acquired title to the south 54 feet."

BANKRUPTCY - COMPOSITION AND EXTENSION

(HOLC v. Quincy Mitchell Creed, United States Circuit Court of Appeals for the Fifth Circuit.)

Proceeding by a farmer for composition and extension under Section 75 of the Bankruptcy Act (Frazier-Lenke Act) is not affected by Section 517 of Chapter 12 of the Chandler Act providing that the provisions of the latter Act shall not be deemed to allow extension or impairment of secured obligations held by HOLC.

In a Texas bankruptcy proceeding Creed, a borrower from and mortgagor to HOLC, sought (as a farmer) composition and extension under Section 75 of the Bankruptcy Act, 11 U.S.C.A. 203. HOLC, having a mortgage on Creed's farm, moved to dismiss the proceedings so far as the same might in any manner affect its debt and mortgage. The motion of HOLC was based upon the contention that since the effective date of the Chandler Act, 52 Stat. 840, HOLC and its mortgages are not amenable to proceedings under Section 75 (Frazier-Lenke Act) because the Chandler Act in Chapter 12, Section 517, providing for real property arrangements, says: "Nothing contained in this Chapter shall be deemed to affect or apply to the creditors of any debtor under a mortgage insured pursuant to the National Housing Act and Acts amendatory thereof and supplementary thereto; nor shall its provisions be deemed to allow extension or impairment of any secured obligation held by Home Owners' Loan Corporation or by a Federal Home Loan Bank or member thereof."

The Conciliation Commissioner, the District Court of the United States and the United States Circuit Court of Appeals held against HOLC upon the ground that the provision above quoted applied only to proceedings under the Chandler Act and had no application to proceedings under Section 75 of the Bankruptcy Act known as the Frazier-Lenke Act. It was held that Chapter 12 of the Chandler Act is not so related in subject matter to the agricultural compositions and extensions under Section 75 (Frazier-Lenke Act) as to import Section 517 into proceedings for agricultural compositions. It was further held that Chapter 12 of the Chandler Act does not repeal by implication or supersede the Frazier-Lenke Act.

CONTRACTS OF UNITED STATES

(Evelyn Fonger v. HOLC. District Court of the United States for the Western District of Michigan, Southern Division.)

Removal. Any suit against HOLC arises under Constitution and Laws of United States. Courts will not decree

specific performance of uncertain and indefinite contract even though there has been past performance.

Fonger sued HOLC in a state court for the specific performance of an alleged contract of sale of realty at the price of \$3300. HOLC removed the case to the United States District Court where Fonger moved to remand. Fonger conceded that HOLC is an instrumentality of the United States and that the government of the United States is the owner of more than one-half of its capital stock. She contended, however, that a correct decision of the case did not depend upon a construction of the Constitution or of a statute of the United States and that therefore HOLC was not entitled to remove to the Federal court. The jurisdictional amount was of course involved, and the court denied her motion to remand and held that any suit against HOLC arises under the Constitution and laws of the United States. The motion to remand was denied under authority of *Matter of Dunn*, 212 U.S. 374; *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta*, 256 U.S. 350, 356; *Osborn v. Bank of United States*, 9 Wheat. 738; *Railroad Removal Cases*, 115 U.S. 1; *Federal Bank v. Mitchell*, 277 U.S. 213; *Bankers Trust Co. v. Texas & Pacific Railway Co.* 241 U.S. 295; and *Moore's Federal Practice*, 502-505; U.S.C.A. Title 28, Sections 41, 42 and 71. The opinion then continued as follows:

"The amended bill of complaint is in the nature of a bill for specific performance. In substance, it alleges that a mortgage owned by defendant Home Owners' Loan Corporation upon land owned by plaintiff's mother was foreclosed July 11, 1938, and that on or about the 3rd day of August, 1939, the period for redemption having expired and plaintiff's mother being unable to redeem from sale, plaintiff made an agreement (not in writing) with the Grand Rapids Manager of the Home Owners' Loan Corporation that if plaintiff would furnish a buyer for the property for \$3300.00, the property would be sold to the buyer; that plaintiff induced one John Boverhof to offer to purchase the property under an agreement that Boverhof would execute a life lease to plaintiff's mother, and that about September 11, 1939, Boverhof made an offer to purchase the property for \$3300.00, \$330.00 to be paid down, and that he tendered a check for \$50 earnest money. The rejection of this offer is the basis for the suit.

"Even if the agreement to sell had been in writing it appears to the court that the uncertainty and indefiniteness as to the time for payment or performance precludes the remedy by specific performance. See 58 C.J. 938, 939. 'To be specifically enforceable, a contract must be complete in its terms, or at least in its essential and material terms, parts and elements; it must be capable of being performed without adding to its terms; and it must not leave a material and essential term or element for future negotiation and settlement. The court cannot supply

an important omission or complete a defective contract for the purpose of specific performance.' 58 C.J. 940.

"See also, Woods v. Johnson, 266 Mich. 172; Snider v. Schaffer, 276 Mich. 92; Windiate v. Leland, 246 Mich. 659.

"Plaintiff relies upon sec. 13, 415 C.L. Mich. 1929 which provides: 'Nothing in this chapter contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements, in cases of part performance of such agreements.'

"While such statutes have been treated as recognizing and preserving the power to enforce oral contracts which have been partly performed, their application has been narrow and their use has been for the prevention of the use of the statute of frauds as an instrument for fraud. It is recognized that the doctrine permitting specific performance of such contracts rests upon the theory that defendant has precluded himself from invoking the statute by permitting plaintiff to change his position in reliance upon the contract to such an extent that the application of the statute would operate as a fraud upon him. See 58 C.J. 988.

"The amended bill of complaint contains no allegations to justify a belief that relief could be granted upon such a theory. The only part performance relied upon is finding of a purchaser and such services can be adequately compensated in damages if a legal right thereto exists. But, in any event, it is well recognized that no amount of performance or attempted performance is sufficient to authorize the specific performance of an oral contract which is not definite or certain in its terms. For these reasons, the motion to dismiss must be granted."

COURTS - PROCEDURE - BILL OF INTERPLEADER

(Pickrel, Schaffer, Harshman, Young & Ebeling, a partnership, v. Mary R. Swentzel, et al. Court of Common Pleas, Scioto County, Ohio.)

A law firm may interplead its own client and others to determine party entitled to a recovery made for client in a law suit where client had authorized the law firm to change its position by making commitments to others.

"This is an action in interpleader filed by the firm of Pickrel, Schaffer, Harshman, Young & Ebeling of Dayton, Ohio.

"The evidence shows a lot of correspondence between the defendant Mary R. Swentzel and the firm of lawyers who brought this action

and the HOLC. The facts are that the HOLC was foreclosing a mortgage on her property in Portsmouth and that she had a personal injury suit in Miami county and that Mr. Pickrel of the above mentioned law firm, at her instance and request, wrote the HOLC that if they would hold off foreclosure proceedings and not push their judgment and sell the property, out of the proceeds of this personal injury suit, when collected, an amount would be turned over to the HOLC to pay the back interest and all costs.

"The correspondence between the parties offered in evidence showed that Mr. Pickrel was authorized by Mr. Swentzel so to act and that the result was that the HOLC did suspend all action in the matter until the personal injury matter was settled, and that thereafter an amount was taken to the HOLC office which they claimed did not cover all of the amount then due, and was refused by a person who was not authorized to take the money, and that there was no actual tender to an authorized agent, although probably the result would have been the same had it been so tendered; and that the specified amount offered by Mrs. Swentzel, through her attorneys, was refused at the office of the HOLC.

"That thereupon Mrs. Swentzel notified her lawyers to pay this money directly to her as her agent, which they refused to do owing to the fact that they had bound themselves to see that the HOLC was paid.

"Other litigation resulted and finally this interpleader has been filed.

"Ordinarily, an agent is bound to follow the instructions of his principal and under ordinary conditions an attorney has no right to withhold money due his client upon the ground that some one else claims an interest in it, but as we view this matter, Mrs. Swentzel had authorized her agents to change their position and make certain promises upon which they might themselves be held and we feel that they are perfectly justified in bringing this action in interpleader. (See *Goddard v. Leech*, Wright 476).

"Inasmuch as the HOLC had, upon the written promise of the agent of Mrs. Swentzel who was authorized by her to make such promise, changed their position and stopped the foreclosure suit, we feel that this money should be paid to the HOLC to be applied upon the debt which the defendant Mrs. Swentzel owes to the HOLC."

COURTS - UNITED STATES - COSTS

(RFC v. J. G. Menihan Corporation, et al. District Court, W. D. New York, 29 Fed. Supp. 853.)

The adoption of the procedural rule providing that costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law left unaffected costs against the United States, its officers and agencies. Defendants who prevailed on trial of action brought against RFC are not entitled to costs.

"The defendants having prevailed on the trial of this action apply for costs and an additional allowance. The plaintiff is an agency of the Federal Government. Rule 54(d) of the Rules of Civil Procedure, 28 U.S.C.A. following section 723c, provides that costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. By the adoption of this rule costs against the United States, its officers and agencies were left unaffected. I find no provision of law permitting costs to be imposed against the Reconstruction Finance Corporation. I therefore hold that the defendants are not entitled to costs. Federal Deposit Insurance Corporation v. Casady et al., 10 Cir., 106 F. 2d 784, decided September 25, 1939."

LANDLORD AND TENANT - LIABILITY

(Gertrude I. Letson v. HOLC. District Court of the United States for the District of Massachusetts.)

Tenant injured by defect in premises of which no notice had been given to landlord cannot recover unless landlord had agreed to maintain premises in condition of safety without reference to notice from tenant of defects and by virtue of agreement of letting had retained such possession of premises as necessary for that purpose.

Gertrude I. Letson, a tenant of HOLC in one of its residence properties, sued HOLC for \$10,000 damages for personal injuries sustained by her in a fall down the inside steps leading from the first floor to the cellar of the property. As she was descending the steps one of them came loose because of its decayed condition and caused her to fall. The house had two stories and a cellar and plaintiff, with her father and mother, was a tenant of the first floor. The second floor was rented to another family. The steps leading from the first floor to the cellar down which plaintiff fell were used only by the plaintiff and her family. They were not for the common use of the tenants in both floors of the house.

At the trial plaintiff contended that her tenancy fell within the third class of tenancies outlined in *Fiorntino v. Mason*, 233 Mass. 451, 124 N.E. 283, i.e., where the contracting parties agree that the landlord shall keep and maintain the premises in a condition of safety on his own responsibility and without reference to notice from the tenant of defective conditions and by virtue of the agreement of letting shall have and constantly retain such possession of the premises as is necessary for that purpose. Plaintiff and her mother testified that Mr. Cotter, property management representative of HOLC, at the time of the letting promised that HOLC would put the premises in safe condition and would keep them that way. Plaintiff then called to the witness stand Mr. Quinn, assistant state manager in charge of property management of HOLC, who testified that Mr. Cotter had authority only to examine the premises and report to HOLC their condition and to recommend any repairs that might be necessary to put the premises in a rentable or salable condition. Plaintiff did not prove the giving of any notice to HOLC of the defective condition of the step that caused her fall.

At the conclusion of plaintiff's evidence the Court directed a verdict in favor of HOLC because the evidence failed to show such an agreement as would bring the tenancy within the third class outlined in *Fiorntino v. Mason*, supra, and because it did not appear that Mr. Cotter had authority, either actual or ostensible, to bind HOLC to such an onerous agreement as would bring the tenancy within said third class.

INSURANCE

(Aetna Life Insurance Co. v. Aird. C.C.A. 5 (Hutcheson, C.J.) December 14, 1939. 7 U.S. Law Week 760.)

Stationary trailer occupied by insured as his dwelling at time of fire causing his death was "building" within meaning of double indemnity clause.

Provisions of a life insurance policy for double indemnity in the event of the insured's death, as the result of the burning of a "building" were applicable to the death of the insured caused by the burning of a trailer which he was occupying as a dwelling and office after it had been disconnected from the automobile, and the wheels had been removed, and it had been raised up with its four corners supported by four heavy special jacks. At the time of the fire, the trailer was a "building" within the meaning of the policy.

In the instant case, the trailer was being used, at the time of the insured's death, as a stationary dwelling. It was adapted for such use. It was completely equipped as a place in which to live, with

beds, bath, toilet, cooking facilities, side walls, a roof and floors, and with cross walls subdividing it into parts. Although the insured had used it for transportation purposes, it had been stationary for one week prior to the fire.

LIENS - NOTICE

(John Thomas Gough v. HOLC. Court of Civil Appeals, Eighth Judicial District of Texas.)

Casual residence at times in property with owner of legal title, does not put purchaser on notice of equitable title resulting from prior payment for property with funds belonging to community estate.

In a suit between HOLC and John T. Gough and wife, John T. Gough claimed to be the equitable owner, by inheritance from his deceased father, Thomas J. Gough, of an undivided one-fourth interest in realty of which HOLC had become the purchaser at the foreclosure sale of its deed of trust thereon.

On February 15, 1913, seven months after the death of Thomas J. Gough, the owners of the realty conveyed it to Jannie Gough, widow of Thomas J. Gough and mother of John T. Gough. The property was paid for, however, with funds belonging to the community estate of Jannie Gough and her deceased husband, Thomas J. Gough. Jannie Gough and her husband had actually lived in the property prior to his death, and thereafter she continued to live in it until her death. At times, John T. Gough and his wife also lived in the property with Jannie Gough, but at the time the loan was made by the City Mortgage Company and the deed of trust executed securing the same (hereinafter mentioned) John T. Gough was not living in the property, though he was there for three or four weeks at that time on a visit from Ranger, Texas, where he resided.

On December 11, 1931, Jannie Gough conveyed the property, in trust, to a trustee to secure the City Mortgage Company in the payment of a note in its favor executed by her for borrowed money. In May 1934, the City Mortgage Company assigned the indebtedness and lien to HOLC, and on May 11, 1934, Jannie Gough executed a deed of trust upon the property securing her note to HOLC, the note being a renewal of her indebtedness to the City Mortgage Company theretofore assigned to HOLC. On July 6, 1937, Jannie Gough conveyed the property to her other son, Pat F. Gough, who assumed the payment of the indebtedness to HOLC. Thereafter Jannie Gough died. Still later HOLC foreclosed, bid in the property and received a trustee's deed.

Although the property had been paid for with funds belonging to the community estate of Jannie Gough and her deceased husband, Thomas J. Gough, and although John T. Gough was one of their only two children, the court held against him and in favor of HOLC, and in so holding, said:

"Jannie Gough acquired the legal title to the lots. The appellee (HOLC) holds under her. The title of the plaintiff (John T. Gough) is an equitable one. Bona fide purchasers and lienholders for value, acquiring the title to realty or a lien thereon from the owner of the legal title, are protected against equitable titles such as here asserted by John T. Gough. In order for a holder of such equitable title to prevail against such a purchaser or lienholder, it must be shown the latter acquired their rights with notice, actual or constructive, of the outstanding equitable title. The record here is wholly insufficient to show actual notice of the outstanding equitable title. Nor is the evidence sufficient to put either the City Mortgage or the Home Owners' Loan Corporation upon inquiry which would charge either of them with constructive notice of the outstanding equitable title asserted by John T. Gough."

TAXATION - EMPLOYEES

(Meredith v. State Tax Commission. Supreme Court of Oregon.)

An Oregon state income tax law is not retroactive so as to subject Federal employees income to same. The decisions in New York ex rel Rogers v. Graves, 299 U.S. 401, and State Tax Commission of Utah v. Van Cott, 306 U.S. 511, do not act retroactively so as to subject the salary of an HOLC employee to a state income tax for the year 1935 under a state law in force in 1935 that exempted from state income taxation "salaries, wages and other compensation received from the United States by officials or employees thereof which are or shall be exempt from state taxation by Federal law".

Mrs. Helen Meredith, a resident of Oregon and an employee of HOLC in its office at Portland, Oregon, paid under protest to the State of Oregon an income tax for the year 1935 on her salary from HOLC which constituted her entire income for the year. Having exhausted the remedies given her by statute, she brought this suit to recover the money thus paid. The applicable Oregon statute (Oregon Code 1935 Supplement) provided:

"The term gross income does not include the following items, which shall be exempted from taxation under this Act: . . .

"(f) Salaries, wages and other compensation received from the United States by officials or employees thereof which are or shall be exempt from state taxation by Federal law."

The court pointed out that prior to the decisions of the Supreme Court of the United States in *New York ex rel Rogers v. Graves*, 299 U.S. 401, and *State Tax Commission of Utah v. Van Cott*, 306 U.S. 511, the Federal decisions were clearly and decisively that salaries of employees of such Federal instrumentalities as HOLC were not subject to income taxes levied or sought to be levied by states because of constitutional immunity to such taxation, citing *McCulloch v. Maryland*, 4 Wheat 316, 432; *Indian Motorcycle Co. v. United States*, 283 U.S. 570, *Dobbins v. Commissioners of Erie County*, 16 Pet. 435 and *Collector v. Day*, 11 Wall. 113, and that those decisions were in force and effect and were the Federal law on the subject at the time the above quoted Act of Oregon was enacted. The court therefore held in effect that it was not the intention of the Legislature of Oregon, at the time it enacted the above quoted Act, to subject to state income taxation the salaries of employees of instrumentalities of the United States and that the decisions in the *Graves* and *Van Cott* cases could not act retroactively so as to subject Mrs. Meredith's salary for the year 1935 to the state income tax of that year. The court, among other things, said:

"To accede to the contention of the tax commission that the holding in *Graves v. New York ex rel. O'Keefe*, supra, and *State Tax Commission of Utah v. Van Cott*, supra, reversing earlier decisions of long standing on the same subject, had a retrospective effect and subjected to state taxation the plaintiff's salary for the year 1935, is to attribute to the legislature in its enactment of subdivision 2, supra, the above quoted provision of the Oregon statute an intention which obviously it did not have. Such a construction of the statute in question would work an injustice to Federal employees who had complied with the law as then interpreted by the Supreme Court of the United States, by imposing upon them the duty of paying taxes for past years during which they were specifically exempted from such payment.

"The injustice of such a result was foreseen by the Congress of the United States in its enactment of the statute known as 'Public Salary Tax Act of 1939', U.S.C.A. Current Service No. 4, pages 668-670. By #4 of title 1 of this act the United States consents to the taxation of compensation for personal services received by any officers or employees of the United States or any agency or instrumentality thereof

after December 31, 1938, by any duly constituted taxing authority having jurisdiction to tax such compensation. Section 207 of title II of the act prohibits the states from collecting any tax imposed by them on compensation received before January 1, 1939, for personal services as an officer or employee of the United States or any agency or instrumentality thereof, which is exempt from Federal income taxation. By the same act provisions are made for a refund of Federal income tax collected by the United States government from state officials and employees on compensation received by them prior to December 31, 1938.

"It is our opinion that the salary received by Mrs. Meredith during 1935 as an employee of Home Owners' Loan Corporation was exempted from taxation under the income tax law of this state. The decree of the circuit court is affirmed."

ZONING

(Central Trust Co. v. City of Cincinnati. Court of Appeals of Ohio, Hamilton County, 23 N.E. (2d) 450.)

Courts will not interfere with the sound discretion of those on whom rests the responsibility of fixing boundaries or zones in a municipality, unless the exercise of that function indicates a wholly capricious, arbitrary, and unreasonable action, entirely foreign, to any consideration involving the safety, health, morals, or welfare of the public.

The plaintiff in his petition alleged the ownership of certain property now zoned by the defendant as residence "D". "The prayer of the petition is that the defendant be enjoined from 'interfering in any way directly or indirectly, with the use of the plaintiff's premises for business purposes, such as would be permitted in a business "A" district under the zoning ordinance of the city of Cincinnati,' and from enforcing the zoning ordinance so far as the same applies to place and keep plaintiff's property in residence 'D' district or any other residence district."

The city, after admitting certain matters, set up the defense that the plaintiff failed to exhaust the remedies under the city ordinances providing in section 1330-2 for "Appeals" to the board, and in section 1330-9 for "Cases of Hardship", and it further alleged that the plaintiff had not requested a permit.

The plaintiff denied, in its answer, that it was under any duty to request a permit and that to file an appeal would have been an

useless and idle ceremony, and that it was unnecessary to request a permit. Plaintiff further alleged that it had no remedy under the non-conforming use ordinances permitting modification of the zoning requirements in favor of an extension of a non-conforming use or a substitution for a non-conforming use, in that its proposed use of the premises involve both an extension and substitution for the present use.

The petition of the plaintiff further stated that it had planned to build on the property as now contemplated and further that the property is too small to permit the erection of an apartment building permitted by residence "D" zoning.

"The present zoning brings two zones into juxtaposition on a line running north and south in Pennington street, upon which plaintiff's property abuts on the east." On one side of the street is business "A" district and on the other side where plaintiff's property is located is residence "D" district. The lines dividing all of the districts are not run along arbitrary or capricious courses. If the plaintiff's application were granted it would mean that the business "A" district to the west of plaintiff's property would be extended east into the residence "D" district to the extent of the dimensions of plaintiff's lot. The court in refusing to grant the injunction requested by plaintiff said: "It is obvious that in the process of zoning the several districts zoned according to limitations upon the use of property for residence, business, or semi-business purposes, must have definite boundaries. It is also obvious that the property abutting upon the boundaries must be affected to some degree by the proximity of the property to the boundary of the zone. Such a situation is inevitable unless the whole of a community is to be placed in one unrestricted zone. Thus, as has become so manifest, one man's property may be depreciated to a point of complete devaluation by reason of the use of his neighbor's property unhampered by any limitation. It can readily be seen that few persons would welcome such a situation of insecurity. Courts have, therefore, consistently refused to interfere with the sound discretion of those upon whom rest the responsibility of fixing boundaries of zones unless the exercise of this function indicates a wholly capricious, arbitrary, and unreasonable action, entirely foreign to any consideration involving the safety, health, morals, or welfare of the public. *Village of Euclid v. Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016; *Nectow v. City of Cambridge*, 277 U.S. 183, 48 S.Ct. 447, 72 L.Ed. 842; *Pritz v. Messer*, 112 Ohio St. 628, 149 N.E. 30; *Mehl v. Stegner, Dir.*, 38 Ohio App. 416, 175 N.E. 712.

"The fact, therefore, that the property adjacent to plaintiff's property is used for purposes consistent with the business zones in which such adjacent property is located can have no argumentative

force in sustaining the claim of plaintiff that its property must also be included in a business zone on which it abuts.

"There may be cases in which the application of a zoning limitation produces such unwarranted hardships that the enforcement of the limitation results in a confiscation of property. It is the claim of the plaintiff that such is the effect of the zoning provisions in the instant case. In such case, the ordinances of the city, before quoted, provide a remedy which the property owner must first pursue before applying to the courts. Such course was followed successfully in *Mehl v. Stegner, Dir.*, supra. It was not followed in the instant case and, therefore, the position of the plaintiff is unlike that of the property owner in the *Mehl* case, and the relief granted there may not be extended here.

"The plaintiff in the instant case has failed to exhaust the remedies permitted by law, and equity may not intervene until this is done."

The plaintiff relied upon the case of *Euclid v. Realty Co.*, 272 U.S. 365, 71 L.Ed. 303, but the court held that if it were relying upon that case then it was attacking the zoning ordinance in its entirety, and it found that the evidence did not sustain the application "of any such sweeping charge in its entirety". The court found that the pleadings and evidence asserted more or less definitely the purpose for which the plaintiff's lot is to be used. "That purpose appears to be rather innocuous. The building proposed, however, does not qualify within the limitations of a residence 'D' district. The difficulty here is apparent. The plaintiff states that its purchaser plans to use the lot for this sort of a building. But will he adhere to his present plan? If the injunction against the application of the ordinance is entered, as requested, that is in general terms forbidding the zoning authorities from prohibiting or interfering with the use of the property except for uses forbidden by a business 'A' district, he will not be bound to follow his plans, but may use the property for any business 'A' purpose, say for a filling station. This illustrates the wisdom of the rule requiring a positive declaration of the proposed use, binding upon the applicant, which the reviewing authority may consider in connection with general location of the property in its setting. Under such circumstances, a court may intelligently consider the situation of the plaintiff, and it may then determine that he is entitled to relief. The instant presentation offers this court no such opportunity, and the prayer for injunction is denied and the petition dismissed."

ZONING

(Crow v. Board of Adjustment of Iowa City, et al. --- Iowa ---, 288 N.W. 145.)

Where a building permit was valid in its inception, and construction work was begun, the change in status gave permittee a vested right to proceed under the permit as issued, and permit could not be revoked.

The city of Iowa City adopted a zoning ordinance which established four building zones known as A Residence, B Residence, Business and Industrial. The B Residence district permitted buildings such as lodging and boarding houses, apartment houses, hospitals and sanitariums.

The appellant, F. J. Crow, a veterinary surgeon in Iowa City, proposed to purchase a lot in the B Residence district for the purpose of erecting thereon a building containing on the second floor an apartment and on the first floor a veterinary office and hospital, equipped for the treatment of dogs and smaller animals.

Before purchasing the lot Dr. Crow called upon the building inspector to ascertain if a permit could be secured to erect such veterinary office and hospital upon said lot. The inspector, after obtaining an informal opinion from the city attorney, gave his approval that he issue such building permit.

The appellant then purchased the lot and proceeded to tear down a large old house situated thereon. He then made formal application with plans and specifications for the erection of an apartment and veterinarian hospital. The city building inspector again contacted the city attorney who gave a written opinion approving the erection of the building, upon proper application. The building permit was thereafter issued and Dr. Crow entered into a contract for the construction of the building.

After work had been started certain owners of neighboring properties filed with the building inspector and the Board of Adjustment an appeal from the decision and action of the building inspector in issuing such permit, and thereafter the building inspector ordered Dr. Crow to cease said building construction pending the hearing before the Board upon the objections. The hearing was had and the Board of Adjustment ruled that "hospitals and sanitariums as defined in the ordinance are not intended to include animals". The Board ordered the permit cancelled and revoked and directed the building inspector to cancel the same.

Dr. Crow then instituted in District Court a proceeding in certiorari to review the action of the Board. Upon trial a judgment was entered annulling the writ and an appeal was taken. As a ground for reversal the appellant contended that the Board exceeded its authority in revoking the permit after he had, on the faith of it, incurred material expense.

The Supreme Court of Iowa found that appellant had acted in all good faith in obtaining the permit and had disclosed all of the facts before proceeding in detail with the actual construction of the building. In reversing the decision of the trial court it said:

"A building permit duly and legally issued by a municipality is more than a mere license revokable at the will of the licenser. We have held that when the permittee has to some extent acted thereon and thereby incurred expense such permit is not revokable on the grounds that the proposed building and business would be objectionable to residents of the neighborhood. *Rehmann v. Des Moines*, 200 Iowa 286, 204 N. W. 267, 40 A.L.R. 922. However, such holding will not apply if the building permit was not legally granted. *Zimmerman v. O'Meara*, 215 Iowa 1140, 245 N.W. 715. Therefore, inquiry should be directed to the original action of the building inspector in issuing the permit. Was the permit valid when issued by the building inspector?

"Had the ordinance been clear and explicit upon this proposition, its very words would answer the foregoing question. However, the word 'hospital' has been given various definitions including those set out in the opinion of the city attorney. Therefore, its meaning is not clear and unambiguous and as here employed is uncertain. More than one definition might reasonably be given it and interpretation is necessary in order to determine its exact meaning as used in the ordinance.

"This interpretation was the duty of the building inspector and upon it was based the ruling and issuance of the controverted building permit. Apparently, no interpretation had been theretofore authoritatively made for his guidance. In making his decision he was compelled to rely largely upon the ordinance itself. In this situation he properly consulted with and secured the opinion of the attorney employed by the city for such purpose.

"The original ruling was based upon a broad definition of the word 'hospital'. Whether some other definition or interpretation would have been more proper or correct we do not determine nor intimate. The ruling of the building inspector was not clearly erroneous nor without basis. On the contrary the proposition was doubtful and fairly debatable and the language fairly susceptible to the

interpretation given it. Hence it cannot be properly said that he was without right or authority to grant the original permit. Call Bond & Mortgage Co. v. Sioux City, 219 Iowa 572, 259 N.W. 33.

"The building permit was valid in its inception and during the time the construction work was in progress. Due to the change in status quo during this period, Dr. Crow secured a vested right to proceed under the building permit as issued. Consequently, the board acted illegally in ordering the permit revoked upon the grounds relied upon."

ZONING

(Flagg v. Murdock, et al. Supreme Court, Special Term. Kings County, 15 N.Y.S. 2d 635.)

The basement of a multiple dwelling in a residential use district may be used for a dancing school which is patronized mostly by children living on the premises, in the absence of any indication that the school has been so conducted as to extend into a business, particularly where occupancy permit allows use of basement rooms for recreation. The court must administer the law as it finds it and may not change or vary the provisions of the multiple dwelling law, building code or building zone resolution or interfere with the enforcement thereof by the proper authorities. Whether a barber shop, a gift shop, or a restaurant should be permitted to operate in the inner court of a large multiple dwelling located in a residential district is a matter for legislative, not judicial, determination.

This action involved a dancing school which was conducted in the cellar or basement of the multiple dwelling located at Ridge Boulevard and 72nd Street in the Bay Ridge section of Brooklyn. It is a building of 422 apartments of from one to five rooms and is built around three sides of an inner court. It is in a residential use district.

The Tenement House Commissioner ordered the petitioner to discontinue an office on one of the upper floors, which is an apartment resided in by the teacher, and a dancing and music studio "for business purposes", located in the basement.

"Petitioner did not appeal from this order to the Board of Standards and Appeals, but sought to obtain from that Board a variance allowable under the provisions of the Building Zone Resolution. The

Board denied the application and affirmed the decision of the Commissioner of Buildings.

"Petitioner here seeks to review that determination solely with respect to the dancing studio or school. The city moves to vacate the order of certiorari and to affirm the decision of the Board of Standards and Appeals."

The school is patronized mostly by small children many of whom reside in the apartments. Fees are charged for the instructions furnished.

A "school" is permitted in a residential district by a section of the Zoning Resolution. In reaching its determination the Board decided that this dancing school was not such a school as was contemplated in that section. The Board expressed the opinion that the school referred to in the section was intended to mean such as come under the supervision of the Board of Regents.

"The ordinary meaning of 'school' has been defined as a place where instruction is imparted to the young (State v. Peterman, 32 Ind. App. 665, 70 N.E. 550), 'Any place or means of discipline, improvement, instruction, or training' (In re Sanders, 53 Kan. 191, 36 P. 348, 349, 23 L.R.A. 603), 'It is the organization, the union of all the elements in the organization, to furnish education in some branch of learning--the arts or sciences or literature.' Smith v. Donahue, 202 App. Div. 656, 664, 195 N.Y.S. 715, 721.

"As distinguished from public or common schools, private schools are those supported and managed by individuals. Jenkins v. Andover, 103 Mass. 94.

"It has been held that the teaching of singing or of music is a profession and is not a business, trade or industry as these words are used in the law, zoning regulation or common parlance. People v. Kelly, 255 N.Y. 396, 400, 175 N.E. 108. . . .

"In the opinion of this court, the conduct of the dancing school as shown by this record was not a violation of the Building Zone Resolution and the school was legally conducted without the need of any variation from the requirements of the Building Zone Resolution. Furthermore, the occupancy permit allows the use of the basement rooms for recreation rooms. Children's dancing lessons may be said to come within the scope of both recreation and education."

The second action in this case involved the question of whether it would be proper for a barber shop, gift shop, tailor shop and restaurant to do business in the above mentioned multiple dwelling. The court found that, as to the "tailor shop" that tenants left clothing in a room which was collected and taken away to be cleaned and pressed, so it found that this could hardly be used for business.

The court said that it had inspected the premises and found that the businesses were conducted for the convenience of the tenants, and that as a practical matter they could be permitted to carry on.

"However, the court must administer the law as it finds it. It has no power to change or vary the provisions of the Multiple Dwelling Law, Building Code or Building Zone Resolution or to interfere with the enforcement thereof by the proper public authorities. The novel situation presented here is perhaps one not contemplated when the Building Zone Resolution was adopted. However, the advisability of permitting stores such as petitioner has in the inner court of a large multiple dwelling located in a residential district, is a matter for legislative, not judicial, determination.

"It does not appear that the affirmance by respondents of the order by the Tenement House Commissioner requiring petitioner to discontinue the business use of his premises located within a residential zone was an abuse of discretion, improper and contrary to law.

"As to the variance sought, the Court doubts if the Board had power to grant it. *Young Women's Hebrew Ass'n v. Board of Standards and Appeals*, 266 N.Y. 270, 194 N.E. 751. It would seem that if this owner is to have relief it must come through amendments to existing statutes."

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

FARM CREDIT ADMINISTRATION: The Assistant to the Production Credit Commissioner, by regulation filed December 8, amended Part 51 of Title 6 of the Code of Federal Regulations with regard to loans by production credit associations. See 4 Fed. Reg. 4805.

The Governor, by regulation filed December 8, amended Part 50 of Title 6 of the Code of Federal Regulations with regard to the management of production credit associations. See 4 Fed. Reg. 4806-7.

The Acting Governor by regulations filed December 21 (1) prohibited the divulgence of information contained in Applications for Emergency Crop and Feed Loans; (2) prescribed the terms for Emergency Crop and Feed loans in the continental United States, Hawaii and Puerto Rico. See 4 Fed. Reg. 4911-4916.

The Secretary of Agriculture, by regulation filed December 28, authorized certain officials to perform the duties and exercise the functions of the Governor of the FCA during his absence. See 4 Fed. Reg. 4979.

The Acting Governor, by regulation filed December 26, amended the Code of Federal Regulations with regard to fees chargeable for reamortization of Commissioner loans. See 4 Fed. Reg. 4942.

FLB of St. Paul: The President of the FLB of St. Paul by regulations filed December 26 (1) set the fee for reamortization of land bank loans; and (2) fixed the fee payable by the applicant for the reamortization of Commissioner loans and for joint land bank and Commissioner loans. See 4 Fed. Reg. 4942.

FEDERAL HOME LOAN BANK BOARD: Federal Savings & Loan System and Home Owners' Loan Corporation: The FHLBB by resolutions filed December 22, amended the Rules and Regulations for the FSLS with regard to retirement of investments on the request of the Secretary of the Treasury or the HOLC. See 4 Fed. Reg. 4943.

FEDERAL HOUSING ADMINISTRATION: The Administrator on December 29, filed (1) "Regulations effective January 1, 1940 of the Federal Housing Administrator governing the insurance of qualified lending institutions against loss resulting from Class 1 and Class 2 loans made under the provisions of Title I, Section 2 of the National Housing Act as amended" and (2) a similar set of regulations for Class 3 loans. See 4 Fed. Reg. 4984-4993. /See also Legal Comment for further discussion of regulations./

RURAL ELECTRIFICATION ADMINISTRATION: The Administrator by notice filed December 4, allocated funds for certain projects in Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Maine, Minnesota, Mississippi, Missouri, Nebraska, Pennsylvania, Texas, Virginia, Washington and Wisconsin. See 4 Fed. Reg. 4765.

The Administrator, by notice filed December 5, allocated funds for certain projects in South Carolina. See 4 Fed. Reg. 4788.

The Administrator by notices filed December 15 (1) rescinded allocations for certain projects in Mississippi and (2) made new allocations for other designated projects in Mississippi. See 4 Fed. Reg. 4876.

The Administrator, by notice filed December 21, amended prior administrative orders numbered 60, 289, 180 and 358 which made allocations of funds to certain projects. See 4 Fed. Reg. 5005.

The Administrator by notice filed December 28, allocated funds to specified projects in Alabama, Illinois, and New Hampshire. See 4 Fed. Reg. 4974.

UNITED STATES HOUSING AUTHORITY: The Administrator on December 29, filed regulations governing the procedure for: (1) organizing a local housing authority; (2) adoption of accounting procedure; (3) performance of conditions in loan contract; (4) execution of development fund agreement; (5) application for advance loan; (6) preparation of development cost budgets; (7) preparation of site; (8) negotiation, preparation and approval of architect's contract; (9) preparation and submission of preliminary plans; (10) preparation and submission of construction plans and specifications; (11) preparation and submission of revised estimates of development cost; (12) advertisement for bids and award of contracts. See 4 Fed. Reg. 4993-5000.

LEGAL COMMENT

THE NEW TITLE I LOAN REGULATIONS. Insured Mortgage Portfolio,
January 1940.

The new FHA regulations which became effective January 1 governing lending under Title I of the National Housing Act are divided into two parts--Part I, governing Class 1 (repair and modernization) loans and Class 2 (new nonresidential structure) loans, and Part II, governing Class 3 (new residential structure) loans.

The regulations in Part I--that is, those governing Class 1 and Class 2 loans--are changed from those previously prevailing only in that all references to Class 3 loans have been eliminated and that the maximum maturity of Class 2 (b) loans (for new nonresidential structures which are to be used in whole or in part for agricultural purposes) has been increased from 10 years and 32 days to 15 years and 1 calendar month. There has been no change in the forms or procedure used by lending institutions in making these Class 1 and Class 2 loans, in reporting them to the FHA, or in filing claims for loss in connection with them.

A number of changes have been made in the regulations governing Class 3 loans, now grouped in Part II, however, and it is with these changes that this article is chiefly concerned. Fundamentals of the Class 3 loan plan set up under earlier regulations have been preserved, but new features have been provided which are designed to:

1. Give borrowers greater assurance that homes so financed will be livable and structurally sound.
2. Give lenders--and the FHA itself--greater assurance that such homes represent adequate mortgage security.
3. Create a secondary market for borrowers' notes, through The RFC Mortgage Company, and thereby make possible increased lending activity.

Among the fundamental features which have been preserved are the maximums of \$2,500 and 15 years and 5 calendar months to which the amount and maturity of such loans are limited, the requirement that

they be secured by a first mortgage or similar instrument, and that eligible borrowers be owners in fee simple or long-term lessees (though the lease terms have been altered somewhat and the property now is required to be unencumbered), that borrowers establish an equity in the completed property equal to at least 5 per cent of its value as appraised by the lending institution, and that their credit be acceptable to the institution.

Important departures from the old regulations have been made in a number of other respects, however. To list the chief changes:

No second-mortgage or other junior financing is permitted, the borrower being required under Regulation III to certify that the property will be free and clear of all liens other than the Title I mortgage.

The structure must conform with FHA minimum construction requirements and property standards--of which more later--and proceeds of the loans may be expended, under Regulation IV, for financing the appurtenances to, as well as the construction of, a Class 3 structure; that is, for landscaping, fencing, garage, sidewalks, drive, well, and sewage disposal, lighting, heating, and plumbing systems normally needed to complete the structure. The term does not include furniture, stoves, refrigerators, washing machines, and similar equipment.

Loans may be evidenced by either interest-bearing notes or noninterest (discount) notes, Regulation VII governing the former and Regulation VIII the latter.

Interest-Bearing Note Provisions

With respect to interest-bearing notes, the maximum rate is fixed at $4\frac{1}{2}$ per cent per annum of the outstanding principal, payable in monthly or, if the borrower derives more than half his income from farming, in seasonal installments.

These installments are required to cover, in addition to interest, amortization of principal, hazard-insurance premiums, estimated taxes, and any ground rents and special assessments. The institution may also include in these installments the FHA insurance charge and an annual service charge amounting to one-half of 1 per cent per annum of the outstanding principal.

Upon execution of such a note, the lending institution is required to collect from the borrower a sum sufficient to cover hazard-insurance premiums, estimated taxes, and any ground rents, special

assessments, drainage or irrigation charges which are applicable prior to the first periodic payment on the note.

In addition, the institution may collect an initial service charge of up to 1 per cent of the original principal of the loan to cover its closing costs and appraisal fee, plus a sum sufficient to cover the FHA insurance charge both for the first year and for the period prior to the first periodic payment on the note, plus the \$10 FHA examination fee, recording fees, and such costs of title search as are customary in the community.

Provisions of such notes respecting prepayment privileges, late charges, and acceleration of maturity in the event of default closely follow the old regulations respecting discount notes.

Provisions as to Discount Notes

With respect to these discount notes, the new regulations are much the same as the old, except that the former provision permitting the institution to charge the borrower a \$10 appraisal fee has been replaced by one permitting an initial service charge, covering appraisal and closing costs, of up to 1 per cent of the original principal amount of the loan.

Regardless of the type of note, the FHA insurance charge remains at one-half of 1 per cent per annum of the net proceeds of the loan and is payable to the Administrator as before. Contrary to the old regulations, however, there is no FHA insurance charge for the unexpired term should the loan be paid in full or foreclosed prior to its maturity.

The procedure in making these Class 3 loans and the claim provisions in connection with them also have been materially changed.

The new procedure, prescribed in Regulation IX, follows in brief:

The lending institution is required to obtain a credit-statement application (FHE Form No. 3--NDCS) from the borrower, as formerly, but the latter is no longer required to execute a certificate of conformity. The lending institution also must estimate the value of the property, assuming completion of the proposed improvements, with the added proviso that an FHA-approved mortgagee under Title II which has requested the Administrator to determine the eligibility of property for mortgage insurance under Section 203 of that Title may submit the FHA valuation of the property as its own should it decide to make the loan under Title I.

Prior to the start of construction and to the disbursement of any portion of the loan, the institution is required to submit to the FHA insuring office in whose area the property is located an application for property approval (on FHE Form No. 41), and to receive FHA approval of that application in the form of a statement of property eligibility (FHE Form No. 42). The application for property approval, as in the case of the old certificate of conformity, is required to be accompanied by plans or drawings and specifications and a \$10 examination fee. As a part of the application, the institution also certifies the amount of its appraisal and that a properly completed credit-statement application has been or will be obtained.

How Progress Payments are Made

After approval of the property has been obtained, the institution is required to satisfy itself that the value of work done and materials on the site shall be equal to at least 110 per cent of the cumulative amounts of its successive progress payments. It may not disburse more than 80 per cent of the loan proceeds, however, until it has been notified by the FHA that final inspection of the structure has been made and the work approved. Nor, should it be notified by the FHA that the construction is not in accordance with the approved plans, specifications, and conditions, may it make further disbursements of the loan proceeds except at its own risk, as explained later.

No change has been made in the provisions respecting report of the loan to the FHA at Washington, D. C., release of the original borrower in the event of sale of the property to another eligible borrower, or refinancing of loans previously reported for insurance pursuant to Title I of the Act as amended effective July 1, 1939.

Provisions respecting default title requirements, and acquisition of title to property likewise are unchanged, but an important option has been given the lending institution in connection with claims for losses. In lieu of conveying acquired property to the Administrator and claiming reimbursement for its loss as under the old regulations, the institution may now elect to sell the property itself and make claim on the Administrator for its loss over and above the net amount realized from the sale. A period of 6 months from the date of acquisition of the property, or such further period as the Administrator may approve, is granted the institution in which to make the sale. Property may not be so sold for less than 75 per cent of the net unpaid balance of the advance actually made without prior approval of the Administrator, however, and there is an added provision that in calculating its loss under such sale the institution may include, in addition to the items prescribed under the other option, the costs of maintenance and repairs, such costs being limited to 10 per cent

of the net unpaid balance of the advance actually made unless prior approval of the Administrator is obtained for a greater expenditure.

If this option is elected and the property is sold, claim for loss must be filed within 30 days after the sale; if the property is not sold, the institution may file claim under the other option by conveying the property to the Administrator within 30 days after expiration of the period given it in which to seek a buyer.

Provisions Apply to Old Loans

Under Regulation XIV, these optional provisions are made applicable to loans closed on or after July 1, 1939, and the same regulation makes it permissible to extend or renew loans reported under earlier Class 3 regulations for a period up to 15 years from the original dates of the loans.

Provisions respecting insurance reserves have been modified in one important particular. The old Regulation XII.2 (d), which provided for credit to the institution's insurance reserve of the net amount realized by the Administrator from the sale of property conveyed to him, has been eliminated. Hence, under the new regulations, the full amount of the payment made the institution by the Administrator on its claim is now deducted from the institution's insurance reserve. Lenders are reminded in this connection, however, that in establishing such reserves no distinction as between classes of loan is made. That is, reserves established through the making of Class 1 and Class 2 loans cover Class 3 loan claims as well, and vice versa.

So much for the changes in regulations and procedure. Equally important to many institutions are the facilities now offered by The RFC Mortgage Company, for the purchase of those Title I, Class 3 loans which are secured by the earlier mentioned interest-bearing notes.

Terms under which such notes will be purchased were announced by Federal Loan Administrator Jesse Jones on December 19 as follows:

"The RFC Mortgage Company will, until further notice, purchase Class 3, Title I loans bearing $4\frac{1}{2}$ per cent interest and a service charge of $\frac{1}{2}$ of 1 per cent, where the entire proceeds are used to finance new homes the construction of which is started after January 1, 1940. These mortgages will only be bought from originators of the loans who establish to the satisfaction of The RFC Mortgage Company sufficient financial responsibility, their qualifications to service the loans, and who provide an FHA insurance reserve equal to 10 per cent of the original principal amount of the loan, and whose office

or a branch thereof satisfactory to The RFC Mortgage Company is situated within 100 miles of the mortgaged property.

Loans will be purchased at par and, upon execution of a contract to purchase a loan, a fee of $1/2$ of 1 per cent of the loan will be charged. Originators and sellers of the mortgages will be required to service them and may retain the service fee of $1/2$ of 1 per cent paid by the mortgagor, and, in addition, will be allowed another $1/2$ of 1 per cent.

The RFC Mortgage Company will not purchase modernization and improvement Title I loans or loans evidenced by notes written on a discount basis as distinguished from interest-bearing notes."

A few general remarks should be made, in conclusion, concerning the FHA minimum construction requirements and property standards which Class 3 properties must now meet and the FHA inspections to which such properties are now subject during construction.

The property and structural requirements are no longer stated in the regulations themselves, but are set forth in a newly issued FHA circular "Property Standards and Minimum Construction Requirements for One-family One-story Detached Dwellings". These apply to dwellings of the type described which are financed under either Title I or Title II, while properties of other types are governed by the previously existing standards and requirements.

The new requirements are basically minimum and pertain primarily to structural characteristics and to plan characteristics affecting light, ventilation, sanitation, and use. They place primary emphasis upon the structure itself and upon proper application, installation, or construction where a particular material or method of construction is used. Their fundamental purpose is to assure adequate security for a mortgage whose term may extend over a period of 15 to 25 years.

While acceptable types of finish, foundation, etc., are set forth in this circular, selection of the type to be used will, of course, be determined by market requirements within the particular locality. For example, foundations of masonry pier, continuous wall, or concrete slab construction are permitted under the printed requirements, but the type selected for use in a particular dwelling in a particular locality must be acceptable to the mortgagor, mortgagee, and the local FHA insuring office.

As to FHA inspections of Class 3 construction, these will be conducted at the same stages and in much the same manner as inspections

of construction financed under Title II mortgage loans.

Construction Progress Facilitated

To facilitate the progress of construction, however, it has been provided that if the institution requests the first inspection of the work--and likewise the second--not less than 1 week prior to the date the construction is scheduled to reach the inspection stage and if the inspection is not made by that date, then the FHA will waive the right to object to any work concealed after the date inspection was requested and before inspection actually occurred.

Also unlike Title II inspection procedure, no report is made to the lending institution until after the final inspection unless earlier inspections reveal noncompliance with the approved plans and specifications, and such conditions as may have been specified by the FHA. In the event inspection reveals such noncompliance, the institution is notified promptly and any further disbursement it may make will not have insurance protection unless the deficiencies have been corrected to the satisfaction of the Administrator. To assure itself of such correction, the institution may obtain an additional inspection of the work upon payment of a \$5 fee.

In all other respects the inspection procedure and requirements are the same as those under Title II operations.

AESTHETICS AND ZONING. by Thomas W. Mackesey. The Planners Journal, Oct.-Dec. 1939, p. 95.

Mr. Mackesey analyzes some court decisions relative to the use of the police power for aesthetic zoning. It is pointed out in certain instances judges have urged that the promotion of beauty should fall within the scope of the police power and that the interpretation of the law should be liberalized in this direction in keeping with public sentiment.

Specific language is quoted indicating trends toward following public opinion. In a Louisiana zoning case the opinion points out that aesthetic considerations are maintaining in a general way the property values and thus are a part of the general welfare.

The now-famous Massachusetts Billboard case of 1935 is a landmark in the recognition of the promotion of aesthetics as a legitimate function of the police power. Other courts have followed the language of this decision.

The author concludes from the decisions that what is now needed is not more power but more liberal interpretation of the power, promoted by an aroused general appreciation of the beautiful. Examples are cited of the desirability and actual control of architecture. However, the best and most appropriate method for improving architectural design is by education rather than by law.

SELECTED REFERENCES

(The following list of current references, while by no means exhaustive, indicates the availability of material concerning legal problems regarding housing and related documents.)

BANKING

Toward an Understanding of the Federal Home Loan Bank System by Morton Bodfish, 15 Journal of Land & Public Utility Economics, 416-437 (November 1939).

BANKRUPTCY

Contingency - Federal Housing Administration - Priority of Claims in the United States. Case note on United States v. Marxen (59 Sup. Ct. 811; 83 L.Ed. 788; 1939) by Elizabeth J. Saeta in 13 Southern California Law Review 109-10. (November 1939)

BUILDING CODES-General

Building Codes Kill Low-Cost Housing. Walter J. Mattison, City Attorney of Milwaukee, Wisconsin. (Paper read before National Institute of Municipal Law Officers Convention. Recommended two-year suspension of some building code requirements.)

Revision of City Codes by Darlington Hooper, City Solicitor of Reading. (To be printed in Municipalities and the Law in Action - 1939 - to be published by the National Institute of Municipal Law Officers.)

CONSTITUTIONAL LAW

Intergovernmental Tax Immunity - Supremacy of Congressional Act Forbidding State Taxation of Federal Instrumentality. 39 Columbia Law Review 1418-23 (December 1939).

Alternative Remedy - Impairment of Contract - Trust Deeds. Case note on Miller v. Hart (11 Cal. (2d) 739, 81 Pac. (2d) 923; 1938) by Elsa Kievits in 13 Southern California Law Review, 119-22 (November 1939).

CONTRACTS (See also CONSTITUTIONAL LAW)-General

Value of Performance or Cost of Performance as Measure of Recovery for Breach of Contract to Grade Land. Note on *Groves v. John Wunder Co.* (286 N.W. 235) (Minnesota 1939) in 34 Illinois Law Review 501-504. (December 1939).

'Contracts' and the Conflict of Laws: 'Intention' of the Parties by Walter Wheeler Cook, 34 Illinois Law Review, 423-32. (December 1939).

The Present Status of the Sealed Obligation. 34 Illinois Law Review, 457-81 (December 1939).

Contracts as Affected by Duties Impliedly Assumed by the Offeree. Note on *Crossland v. Kentucky Blue Grass Seed Growers' Coop. Assn.* (103 F. (2d) 565, 567; C.C.A. 6th, 1939) by Arthur A. Dickerman in 28 Georgetown Law Journal, 263-65 (November 1939).

CORPORATIONS

The Private Corporation: Its Constitutional Genesis by James J. Robbins, 28 Georgetown Law Journal, 165-183 (November 1939).

HOUSING-General

Anti-Trust Action and American Housing by Corwin D. Edwards, 15 Journal of Land & Public Utility Economics, 456-463 (November 1939).

-Legislation - England

Emergency Legislation Affecting Housing and Building Work Generally. Journal of The Royal Institute of British Architects. Oct. 16, 1939. pp. 997-999. (Short summary of principal war legislation affecting English housing and building industry.)

MORTGAGES (See also CONSTITUTIONAL LAW and SURETYSHIP)-General

Home Owners' Loan Corporation - Validity of a Second Trust Deed. (Case note on *McAllister v. Drapeau*, 98 Cal. Dec. 107, 92 Pac. (2d) 911; 1939) by Raymond Lee Kahn in 13 Southern California Law Review, 162-164. (November 1939.)

Mortgages of Merchandise by David Cohen and Albert B. Gerber, 39 Columbia Law Review 1338-56 (December 1939).

PLANNING

Some Planning Accomplishments of 1939 General Assembly of Maryland.
Maryland State Planning Commission. 1939.

REAL PROPERTY

Words of Limitation or Words of Purchase: Rule in Shelley's Case - Wild's Case - Miscellaneous by Homer F. Carey, 34 Illinois Law Review, 379-404. (December 1939).

Land Subdivision - a manual to aid all concerned with improved standards and practices in the subdivision or re-subdivision of urban land. Available from the American Society of Civil Engineers, 33 W. 39th St., New York City.

Model Subdivision Regulations. New York State Conference of Mayors, City Hall, Albany, New York.

The Law of Property and Recent Juristic Thought by Roscoe Pound. Address delivered at the dinner of the Section of Real Property, Probate and Trust Law at San Francisco, July 11, 1939, and published in XXV A. B. A. Journal 993-999 (December 1939).

STATUTE OF LIMITATIONS

Statutory Interpretation - Tolling of the Statute of Limitations. Case note on Stem v. National City Company (25 Fed. Supp. 948; D. C. Minn 1938) by Lloyd A. Raich in 13 Southern California Law Review 166-8 (November 1939).

SURETYSHIP

Principle and Surety: Discharge: Alteration by Reduction. Notes and Comments on Becker v. Faber (280 N.Y. 146, 19 N.E. (2d) 997; 1939) by Earle B. Henley, Jr. in 25 Cornell Law Quarterly 143-46 (December 1939).

TAXES (See also CONSTITUTIONAL LAW)

Tax exemption in low-rent housing projects as contemplated in section II of the National Housing Act, 1938. Prepared by George S. Mooney at the request of the Canadian Federation of Mayors and Municipalities, Mount Royal Hotel, Montreal. Montreal, The Federation. (1939) 22 pp. mimeo., 30 cm.

TRUSTS

The Trust Indenture Act of 1939 by Robert G. Miller, 25 Cornell Law Quarterly 105-118 (December 1939).

USURY

Usury as a Public Nuisance: Injunction and Receivership. Note on State ex Goff, County Attorney V. O. Neil (286 N.W. 516; Minn. 1939) in 34 Illinois Law Review 497-501 (December 1939).

ZONING

Zoning and Rezoning for USHA-Aided Projects. United States Housing Authority Bulletin No. 27 on Policy and Procedure. 14 pp. mimeo. November 25, 1939. A bulletin setting forth (I) the nature of zoning, the methods of enforcing the zoning ordinance, and the manner in which the local housing authority may participate in its enforcement; (II) the relationship of on-site or "permissive" zoning or rezoning, and off-site or "protective" zoning or rezoning, to the USHA-Aided Program; (III) the relationship of permissive zoning and rezoning to the acquisition and use of the project site; (IV) the relationship of protective zoning and rezoning to the area surrounding the project site; (V) the procedure for amending the zoning ordinance and the procedure for obtaining "variances" or exceptions from the zoning ordinance; and (VI) the procedure for obtaining the enactment or adoption of a zoning ordinance in a city without zoning.

HOUSING LEGAL DIGEST

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1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations

which are satisfied by the functions $u_i(x, y, z)$ and $v_i(x, y, z)$ in the domain G of the space E_3 bounded by the surface S .

It is shown that the system of equations (1) has a unique solution in the domain G if the functions $f_i(x, y, z)$ and $g_i(x, y, z)$ are continuous in G and satisfy the conditions

which are satisfied by the functions $u_i(x, y, z)$ and $v_i(x, y, z)$ in the domain G .

DECISIONS.

BANKRUPTCY - FRAZIER-LEMKE ACT

(Borchard v. California Bank. C.C.A. 9, Jan. 17, 1940 (on petition for rehearing) 8 U.S. Law Week 168.)

Stay of foreclosure may be terminated in discretion of court if it appears that rehabilitation is not reasonably probable.

In a proceeding under Section 75(s) of the Bankruptcy Act in which the district court granted the farmers seeking relief under the statute a stay of state court foreclosure proceedings, the court has discretion to terminate the stay if at any time it appears that rehabilitation is not reasonably probable.

This conclusion, announced by this court in its original decision in this case, is adhered to on petition for rehearing, notwithstanding the subsequent decision of the Supreme Court of the United States in the case of John Hancock Mutual Life Ins. Co. v. Bartels (7 LW 663), in which it was held that the statute contained no provisions for dismissal of proceedings because of the absence of reasonable probability of financial rehabilitation.

The decision of the Supreme Court in the Bartels case does not require this court to change its opinion. In its decision, this court relied on the statement of the Supreme Court in Wright v. Vinton Branch, 300 U.S. 462, that the statute "must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period". This construction was given the statute in order to uphold its constitutionality.

In the Bartels case, the Supreme Court disapproved of dictum in the Wright case to the effect that a petition could be dismissed in the absence of the probability of financial rehabilitation, but did not disapprove of that part of the opinion relied on by this court in construing the statute to permit the district court in the exercise of discretion to terminate a stay of foreclosure proceedings when it appears that rehabilitation is not reasonably probable.

BANKRUPTCY

(Kalb v. Feuerstein, ---U.S.---, 84 Adv. Ops. Oct. Term 281, Decided January 2, 1940.)

A determination by a state court of the question whether a provision of the Bankruptcy Act operates as an automatic stay of foreclosure proceedings in state courts presents a Federal question subject to review by the Supreme Court. The provisions of section 75 of the Bankruptcy Act (11 USCA section 203), construed to vest in bankruptcy courts exclusive jurisdiction over farmer-debtors and to withdraw from all other courts power to maintain and enforce foreclosure proceedings against them, are the supreme law of the land which all courts, state and Federal, must observe.

The appellees herein, who are the mortgagees, began foreclosure on appellants' farm in March 1933. Judgment was entered in April 1933 and in July 1935, the sheriff sold the property under the judgment. In September 1935, while appellant Kalb had duly pending in the bankruptcy court a petition for composition and extension of time to pay his debts under section 75 of the Bankruptcy Act (Frazier-Lenke Act), the County Court granted the mortgagees' motion for confirmation of the sale. No stay of the foreclosure or of the subsequent action to enforce it was ever sought or granted in the state or bankruptcy court and in March 1936 the sheriff executed the writ of assistance which had been obtained from the state court and ejected appellants and their family from the mortgaged property.

There are two appeals to the Wisconsin Supreme Court and the question in both cases was whether the Wisconsin County Court had jurisdiction, while the petition under the Frazier-Lenke Act was pending in the bankruptcy court, to confirm the sheriff's sale and order appellants dispossessed, and if it did not, whether its action in the absence of direct appeal is subject to collateral attack.

The Wisconsin Supreme Court affirmed both cases. The United States Supreme Court, through Justice Black, who rendered the decision, reversed the Wisconsin Supreme Court and said:

"In its first opinion the Supreme Court of Wisconsin said: 'It is the contention of the plaintiff /mortgagor/ that this statute is self-executing,—that is, that it requires no application to the state or federal court in which foreclosure proceedings are pending for a stay; in other words, that it provides for a statutory and not for a judicial stay. Plaintiff's claims under the Bankruptcy Act present a question which clearly arises under the laws of the United States, and therefore present a federal question upon which determination of the

federal courts is controlling.' Addressing itself solely to this Federal question of construing the Frazier-Lemke Act, the Wisconsin court decided that the Federal Act did not itself as an automatic statutory stay terminate the state court's jurisdiction when the farmer filed his petition in the bankruptcy court. Since there had been no judicial stay, it held that the confirmation of sale and writ of assistance were not in violation of the Act.

"Appellees insist, however, that the Wisconsin court on rehearing rested its judgment on an adequate non-federal ground. If that were the fact, we would not, under accepted practice, reach the state court's construction of the Federal statute. *Honeyman v. Hanan*, 300 US 14, 18, 81 L ed 476, 478, 57 S Ct 350; *Lynch v. New York*, 293 US 52, 54, 79 L ed 191, 192, 55 S Ct 16; *Enterprise Irrig. Dist. v. Farmers Mut. Canal Co.* 243 US 157, 164, 61 L ed 644, 648, 37 S Ct 318; *Hammond v. Johnston*, 142 US 73, 35 L ed 941, 12 S Ct 141. The statement on rehearing relied on as constituting the non-federal ground was: 'We need not consider nor discuss the question whether the congress has power to divest the jurisdiction of a state court which has once attached. That question is not presented by this record. It would seem from a consideration of section 75 as amended, that the filing of the petition automatically operated to extend the period of redemption. It is possible that that state of facts if made to appear would make the order of the trial court erroneous, but the order would be within the power of the court to make. No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed, and the purchaser put in possession, the plaintiff is in no position to claim that the order of the circuit court is void.'

"But if appellants are right in their contention that the Federal Act of itself, from the moment the petition was filed and so long as it remained pending, operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the state court so as to stay its power to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the Walworth County Court was not merely erroneous but was beyond its power, void, and subject to collateral attack. And the determination whether the Act did so operate is a construction of that Act and a Federal question.

"It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law

protects nullities and vulnerable collaterally. Although the Walworth County Court had general jurisdiction over foreclosures under the law of Wisconsin, a peremptory prohibition by Congress in the exercise of its supreme power over bankruptcy that no state court have jurisdiction over a petitioning farmer-debtor or his property, would have rendered the confirmation of sale and its enforcement beyond the County Court's power and nullities subject to collateral attack. The states cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction over farmer-debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts--State and Federal--must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone.

"We think the language and broad policy of the Frazier-Lemke Act conclusively demonstrate that Congress intended to, and did deprive the Wisconsin County Court of the power and jurisdiction to continue or maintain in any manner the foreclosure proceedings against appellants without the consent after hearing of the bankruptcy court in which the farmer's petition was then pending

"The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Walworth County Court that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress. Because that state court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property--to the extent based upon the court's actions--were all without authority of law. Individual responsibility for such unlawful acts must be decided according to the law of the state. We therefore express no opinion as to other contentions based upon state law and raised by appellees in support of the judgments of the Supreme Court of Wisconsin.

"Congress manifested its intention that the issue of jurisdiction in the foreclosing court need not be contested or even raised by the distressed farmer-debtor. The protection of the farmers was left to the farmers themselves or to the Commissioners who might be laymen, and

considerations as to whether the issue of jurisdiction was actually contested in the County Court, or whether it could have been contested, are not applicable where the plenary power of Congress over bankruptcy has been exercised as in this Act."

BOUNDARIES

(Glenn L. Norton, et ux v. J. A. Murray, et al. Superior Court, Yolo County, California. Decided Dec. 22, 1939.)
Courts will not disturb boundary lines between properties fixed by agreement and acquiesced in for many years, particularly where substantial and permanent improvements have been made in reliance on said lines.

In a suit instituted by Norton against Murray, a mortgagor to HOLC, and HOLC, a serious dispute arose as to the correct location of the boundary line between the lots of Norton and Murray. Both lots had originally constituted Lot 6 of a subdivision, Murray's lot being the east half of Lot 6 and Norton's lot being the west half. Both Murray and Norton deraigned title to a common source, Elliot, who conveyed the west half to Norton's predecessor in title and the east half to Murray's predecessor on December 11, 1867. There appeared to be no plat of record at that time and the descriptions in the deeds were somewhat vague and uncertain as to the exact boundaries conveyed thereby.

At the trial the evidence disclosed that more than fifty years ago a fence was erected between the two lots of the predecessors in title of Norton and Murray at the location of the boundary line as contended for by Norton. This fence was rebuilt in 1898. Later some portions of it fell down through neglect and failure to repair, but other portions of it were still standing at the time of the trial. There was no evidence showing the exact location of the original boundary lines of Lot 6, nor why the fence was erected at the location contended for by Norton. The evidence did show that Murray received his deed and took possession on January 12, 1915, and that from then until 1937 he raised no question as to the proper location of the boundary line at the point contended for by Norton until some time during the year 1937.

The court upon this evidence fixed the boundary line at the location contended for by Norton and in so doing relied upon *Roberts v. Brae*, 5 Cal. (2d) 356, from which the following paragraph was quoted:

"Here there is no substantial evidence tending to rebut or overcome the presumption of an agreement raised by long acquiescence and occupation. As indicated above, the defendant Scheiber has been in

possession for thirty-eight years and the defendant Brae and her predecessors for thirty-five years. Plaintiff has been the owner of her property for over ten years prior to the commencement of this action and in occupancy for a longer period. From other evidence it is apparent that the buildings, the lines and the possessions of the parties have been the same for a long period during which period there apparently have been no title disputes and no admissions that the lines were not true ones. In addition to long acquiescence and occupation, we have in the present case the existence of substantial and permanent improvements, owned by the defendants, upon the disputed pieces of land. Under the circumstances, we are satisfied that agreed boundary lines were established which entitled the defendants to their respective possessions."

BUILDING TRADES PROBE BY THE DEPARTMENT OF JUSTICE.

The campaign to eliminate conspiracies and restraints in the building industry has progressed rapidly and successfully. Numerous indictments have been made against violations of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", and commonly known as the Sherman Antitrust Act. To date, convictions have been obtained in the following cases:

	<u>Date</u>	<u>Fined</u>
New Orleans, Louisiana,--E.D., La.		
New Orleans Chapter, Associated General Contractors of America, Inc., et al.	1/15/40	Assn. \$2,000 15 defendants \$200 each
Sheet Metal Association, Inc.	2/5/40	\$1000
Engineering Survey & Audit Co., et al	1/12/40	New Orleans Chapter of N.E.C.A. \$3500; 25 de- fendants \$100 each
New Orleans--Equity Case		
New Orleans Chapter, Associated General Contractors of America, Inc.		
Consent decree entered 1/15/40 perpetually enjoining practices complained of and setting out manner in which association may operate in future.		
Pittsburgh, Pennsylvania,--W.D., Pa.		
William F. Hess, et al.	2/6/40	57 of 58 defendants as- sessed total \$54,150. In- dictment as to remaining defendant to be nolle prossed.

Pittsburgh--Equity Case

Voluntary Code of the Heating, Piping and Air Conditioning Industry for Allegheny County, et al. Decree entered 12/8/39 perpetually enjoined from further engaging in combinations and conspiracies; dissolution of defendant United Heating Co., etc.

Washington, D. C., Equity Cases, District Court, D. C.

Excavators Admr. Assn., Inc., et al.

Plumbing & Heating Industries Admr. Assn., Inc., et al.

Union Painters Admr. Assn., Inc., et al.

On 12/22/39 decree was entered agreeing to forfeiture of charter of defendant corporation conducting bid depository.

CONSTITUTIONAL LAW - HOUSING AUTHORITIES LAW

(Abraham Kreshtool v. Housing Authority of Baltimore City, et al. Decided December 21, 1939. Court of Appeals of Maryland.)

The Maryland Housing Authorities Law is constitutional and was created to provide for the removal of conditions which threaten the health and safety of the community.

This case involves a representative suit by a taxpayer as intervening party against the Housing Authority of Baltimore to enjoin it from the construction of low-cost housing site on vacant land on the outskirts of the city. It was contended that the project transgressed statutory limits of the Authority or that the statutes and ordinances of the city sanctioning it were unconstitutional. A demurrer by the Authority was sustained, from which an appeal was noted.

Plaintiff agreed that slums may be cleared and slum dwellers newly housed under the police power of the state, but urged that there were limits on the powers of the governmental agencies considered and that the question of transgression thereof was one of judicial determination. It was the belief that the proposed project in the outskirts was not one where rehousing slum dwellers applied and that the development was unauthorized and not a proper subject for tax exemption or legislative aid.

Upon the general averment of the bill with respect to the lack of need for such a project and the purposes which it would serve, the court of appeals reached the conclusion that while the averment might perhaps have been made more explicit, the bill made it sufficiently clear that it sought to restrain a departure from the work of eliminating the threatening conditions which would justify defensive action by

the local government, and held that this being true the defendant was entitled to have the facts heard and, therefore, the case was reversed and remanded for further proceedings.

The court, however, sustained the general constitutionality of the Maryland housing enabling act on its face and stated: "To repeat, the statute, as the court construes it, has the single purpose of providing for the removal of the conditions which threaten the health and safety of the community, new housing being an incident because removal of people from these conditions requires rehousing free from those conditions, and to some extent at least must require rehousing in new houses."

The above case came before Judge Ulman in the Circuit Court No. 2 of Baltimore City. On January 10, 1940, upon hearing, he dismissed the bill of complaint in an oral opinion in which he said that the decision of the Court of Appeals covered almost every phase of the case from a legal aspect but left open one question upon which evidence had been offered; namely: ". . . whether the decision of the Housing Authority to include in its project as a whole area D, an area of presently unimproved land, involves either a past or a prospective, oppressive, arbitrary, or unreasonable action which suggests bad faith.

"My decision is that it does not, and the Bill of Complaint will be dismissed."

CONSTITUTIONAL LAW - HOUSING AUTHORITIES LAW

(Stockus, et al v. Boston Housing Authority. Supreme Judicial Court of Massachusetts, Suffolk, 24 N.E. 2d 333.)

The two principal purposes of the housing authority law are the elimination of substandard areas or abolition of slums, and the furnishing of low rent housing to families of low income; and whether a particular area presents a housing situation that in its final analysis may reasonably be said to be injurious to public safety, health, or morals, is to a great degree a matter of practical judgment.

This case involved an action for a permanent injunction restraining the Boston Housing Authority from enforcing an order purporting to take parcels of property belonging to plaintiffs and located within the tract of land designated in the order to be acquired as a substandard area for the purpose of constructing a low-cost housing project. A demurrer to the complaint was sustained by the lower court from which an appeal was taken.

Plaintiffs alleged that the tract of land did not constitute a substandard area and that the Housing Authority Law, pursuant to which the order was passed, was unconstitutional.

On the basis of the decision in the *Allydenn Realty Corp. v. Holyoke Housing Authority* case, Mass. Adv. Sh. (1939) 1719, sustaining the constitutionality of the Housing Authority Law, the Court held the bill could not be sustained.

Plaintiffs alleged that the tract of land purported to be taken "is not in fact an area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals." It was further alleged that there was an adequate supply of decent, safe and sanitary dwellings in Boston; that the contemplated construction of new dwellings would require a rental beyond the financial reach of families of low income and would increase the burden of taxation on property owners; and that there was no public exigency requiring the clearance of the area in question.

In disposing of this contention the court stated that such a question was one upon which men might honestly differ and that the court had no right to substitute its own judgment for that of the defendant, acting as the local authority upon whom the legislature had conferred the power to determine what areas in its district constitute substandard areas. With respect to the parcel of land owned by the plaintiffs, the court stated:

"The fact that the dwellings of the plaintiffs have such facilities /light, ventilation, sanitation, et cetera/ is immaterial, for the test is the area as a unit and not two dwellings located within the area. Moreover, what the plaintiffs may consider a reasonable provision is no more than a mere opinion on the debatable question as to the extent that the buildings have ventilation, light and sanitation facilities. The allegation that the buildings comply with various statutes and regulations is not admitted by a demurrer . . . The conclusion that the 'buildings are not detrimental to safety, health or morals', is not a necessary conclusion from the specific facts alleged, and consequently is not admitted by the demurrer."

The court stated that the various allegations with respect to the necessity for the taking, no public exigency requiring it, no shortage of adequate and available housing facilities, and all such matters, were of a legislative nature and not open to judicial inquiry or review since the good faith of the defendants was not challenged and there was

nothing in the bill which alleged arbitrary or capricious action.

The court decided that the demurrer could be supported on another ground. It stated: "The power of the defendants to take land by eminent domain for the purpose of erecting dwellings thereon was not limited to slum areas. It was optional with the defendants to clear the substandard area and then to construct new buildings upon this area or upon some other site . . . The defendants could take the area in which the properties of the plaintiffs are located for the purpose of constructing new dwellings provided the conditions of the last mentioned sections were observed. Such a taking would be for a public purpose."

CONSTITUTIONAL LAW - HOUSING AUTHORITIES LAW

(In re Brewster Street Housing Site in City of Detroit,
----Mich.----, 289 N.W. 493.)

All presumptions are in favor of the constitutionality of the state legislation relating to low-cost housing. In condemnation proceedings, large discretion is given the jury in taking testimony, and other particulars. A federal court judgment dismissing condemnation proceedings by the Emergency Administrator of Public Works for acquisition of lands in the City of Detroit for a low-cost housing project, is not res judicata of whether the City of Detroit had the right to maintain such a proceeding.

This case involved an appeal from a proceeding under an ordinance of the City of Detroit passed pursuant to the Michigan Housing Law to establish the necessity for the use of, and compensation to be paid for, five parcels of land sought to be obtained by the city for a housing project.

Appellants' property was located in a tract of eleven blocks in the city, the remainder of which already had been acquired by the Detroit Housing Commission for low-rent housing purposes. Dwellings had already been erected on the land already acquired and it had been voted by the city because of continued crowded and insanitary conditions to extend the project to provide for more families. In order to acquire this additional property, condemnation proceedings were begun in which the jury found for the city. Appellants appealed, claiming unconstitutionality of the Michigan Housing Act and ordinances of the city and numerous errors by the trial court. The property in question in this case previously had been sought by the United States Government through condemnation proceedings, but the Federal court had held that the Federal government had no such power within the state. That proceeding was abandoned.

Appellants contended that the decision of the Federal court was res adjudicata and a bar to this proceeding; that the legislation in question constituted class legislation and was unconstitutional; that it constituted an improper delegation of legislative power by the state to the Detroit Housing Commission; that it violated the constitutional provision that no law shall embrace more than one subject; that the debt limitation of the city would be increased illegally; and that the power of eminent domain may not be exercised for such purposes.

The court dismissed all questions and held that the legislation was not vulnerable by reason of the attack made upon it as unconstitutional.

With reference to the errors of the trial judge, the court held that such a proceeding was not a trial according to the courts of the common law before a judge and jury; it was a proceeding before a constitutional jury to determine the public necessity for using the property in question and the compensation to be made to the owners thereof; that the judge was under no legal obligation to instruct the jury under the law in Michigan; and that it had been held that even though the court improperly charged the jury in a condemnation proceeding, if as a part of that charge the jury were given to understand that it was for them to determine whether it was necessary to condemn such land in question, such an erroneous charge would not be unjustified and reversible. Such was the effect given to the charge in the present case and, therefore, the verdict and judgment were fairly within the range of the testimony and it cannot be said under the facts that the appellants were prejudiced thereby.

CONSTITUTIONAL LAW - HOUSING AUTHORITIES LAW

(Weber, et al and Kuhfeldt v. City of Detroit, et al., Decided December 11, 1939. Circuit Court of Michigan for the County of Wayne.)

The slum clearance program is a public purpose and spending public money for that purpose is not taking private property for a private purpose.

Weber sought an injunction to restrain the further prosecution of the Brewster condemnation case in her capacity as a defendant in that proceeding. In addition to that phase of the case, both Weber and the other plaintiff as taxpayers sought to enjoin further proceedings on the ground that the statute under which the Housing Commission was acting is unconstitutional.

The court held that Weber as defendant in the condemnation case

could not maintain the action because she had an adequate remedy at law.

With respect to the claims of the plaintiffs as taxpayers, the court held that the joinder with the plaintiff suing in another capacity made the bill multifarious and that circumstance would constitute a meritorious objection. Another objection equally meritorious was that the defendants were guilty of laches in that the first housing act was passed in 1933 and that the question of the validity of the statute should be raised before the public has been lulled into a feeling of security by an appearance of acquiescence and before the public has placed itself in a worse position than it would have been in had such claim been asserted in a timely way.

After pointing out that the above questions had not been pressed by the city and that the court was to decide only the constitutionality of the act in question, the court dismissed both the bill of complaint and the taxpayers' bill upon the conclusion that slum-clearance is a public purpose; that the expenditure of public money for that purpose is not the taking of private property for private purposes; and that the act in question is susceptible of a construction which is consistent with that public purpose.

CONSTITUTIONAL LAW - HOUSING AUTHORITIES LAW

(Kantor v. City of Perth Amboy, et al, ----N.J.----10 Atl. 2d 184.)

The New Jersey Housing Acts are not invalid as offending constitutional provisions respecting delegation of legislative power to administrative agencies, appropriation of public money to corporations, exemption of private property from taxation and the taking of private property without just compensation.

"The prosecutor seeks a writ of certiorari to review the ordinance of the city of Perth Amboy and the statutes of this state under which the Perth Amboy Housing Authority exists. He procured a rule to show cause which was dismissed for failure to properly prosecute the same. 122 N.J.L. 588, 7 A. 2d 403. He now seeks a writ and presents no reasons for the issuance thereof, as provided by section 5 of the Certiorari Act, N.J.S.A. 2:81-5. Examining prosecutor's brief, we have assumed that the reasons there stated would be his reasons for reversal. It might be pointed out that the brief offends rule 156 of this court.

"The reasons assigned are, in short, that the New Jersey Housing Acts, Chapt. 19 of the Laws of 1938, R.S. Title 55, Chapt. 14a, N.J.

S.A. 55:14A-1 et seq., and Chapt. 20 of the Laws of 1938, R.S. Title 55, Chapt. 14b, N.J.S.A. 55:14B-1 et seq., are unconstitutional because of fending constitutional requirements with respect to the enactment of laws. The same reasons were presented in the case of *Romano v. Housing Authority of Newark*, 123 N.J.L. 428, 10 A.2d 181, and were argued at length. We there determined that the points with respect to the unconstitutionality of the acts in question were without merit and warranted no lengthy discussions.

"The application for the writ will be denied with costs to the respondent."

CONSTITUTIONAL LAW - MORTGAGES - MORATORIUM

(*Shumaker v. Hoover*; ---Minn.---, 288 N.W. 839.)

The constitutionality of a mortgage moratorium law would not be determined where the holder of sheriff's certificate did not wish to obtain possession of the mortgaged property if some other reasonable means could be found to liquidate the claim. The purpose of the mortgage moratorium act was to grant distressed mortgagors, for a limited time only, an opportunity to save the equity in their holdings, provided they should in the meantime pay holder of sheriff's certificate the reasonable rental value or income toward meeting secured obligation, and the act was intended as a defensive shield to protect owners from exploitation by holders of mortgages.

This proceeding of certiorari brings for review the propriety of an order made by the district court of Big Stone County which granted a further two year extension of the latest Minnesota moratorium law, L. 1939, c. 7.

It appears that several extensions of time for redemption had been granted to the mortgagors. No redemption was made. "Instead, the mortgagors prior to June 15, 1936, and pursuant to L. 1935, c. 47, petitioned for and secured an extension of time for redemption until March 1, 1937. A second and further extension was granted in March 1937, pursuant to provisions of L. 1937, c. 21, until March 1, 1939. The present extension was sought and obtained under the 1939 act, and by the order here for review the period of redemption has been extended to March 1, 1941."

The mortgaged property consists of a two-story building covering three lots with stores on the first floor and an apartment and office suites on the second floor. The average rental is \$450 a month. The

property is in good shape and worth several times more than the mortgage on it. However, with all the income it produces the mortgagor's debt has increased over \$1,000.00, for the reason that they have used the income to keep the property in first class condition and to pay taxes, etc.

"Much is said and numerous cases are cited by counsel in their respective briefs as to the constitutionality of the act under which the present moratorium was granted. It is earnestly urged by the mortgagee (ably opposed by the mortgagors) that the act is violative of the Fourteenth Amendment to the Federal Constitution, U.S.C.A., as well as art. 1, § 7, of our own; likewise that it violates art. 1, § 10, of the Federal Constitution, U.S.C.A. and art. 1, § 11 of our own.

"The decision of the Supreme Court in Home Building & Loan Ass'n. v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481, has furnished the subject matter of many articles, notes and comments in law reviews and other legal publications. Nor has it been neglected by the press. The following notes and articles, amongst many, furnish interesting and instructive reading: Stone, Mortgage Moratoria, 11 Wis. L. Rev. 203; 36 Mich. L. Rev. 1379 to 1382, incl.; 23 Iowa L. Rev. 652, 653; 51 Harvard L. Rev. 1292, 1293; 19 Minn. L. Rev. 210; 22 Minn. L. Rev. 1047, 1048; Prosser, 'The Minnesota Mortgage Moratorium,' 7 So. Cal. L. Rev. 353. The more recent cases bearing upon this phase are: First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762; Kansas City Life Ins. Co. v. Anthony, 142 Kan. 670, 52 P.2d 1208, 104 A.L.R. 364; First Trust Joint Stock Land Bank v. Arp, 225 Iowa 1331, 283 N.W. 441, 120 A.L.R. 932; and the latest Jefferson Standard Life Ins. Co. v. Noble, 1939, Miss., 188 So. 289."

It further appears that the mortgagee does not desire to obtain the property if some other reasonable means may be found to liquidate the claim. The only thing he is seeking is a return of his investment which he has a right to do. The Court in denying the moratorium said:

"The obvious purpose of the moratorium act, both as originally passed and as extended by subsequent acts, was to grant distressed mortgagors, for a limited time only, an opportunity to save possible equities in their holdings and that in the meantime they should pay to the holder of the sheriff's certificate the reasonable rental value or income toward meeting the secured obligation. Here we have rental income during preceding moratoria of \$17,492.27, but the net amount actually received by the mortgagee to apply upon his investment was only \$2,917.44. More than three years have elapsed since the first moratorium was granted, and more than eight years since the mortgage was in default. During all this time the mortgagors have not found means with which to reduce this indebtedness, and specifically no

outlet' has been found for a 'loan to refinance' the present one. If moratoria are to be granted upon such feeble efforts as are here presented, contract obligations need not be of much concern to any mortgagor. We said in *Santee v. Travelers Ins. Co.*, 201 Minn. 66, 69, 275 N.W. 366, 368: 'The moratorium law is intended as a defensive shield to protect owners from exploitation by mortgagees or their assigns.' And in *Frissell Co. v. O'Brien*, 204 Minn. 398, 401, 283 N.W. 756, 757, it was said: 'Judicial notice should be taken of the fact that borrowing conditions have greatly improved during the past few years, and that, with government home loan and other facilities offered, if the owner of property cannot procure a loan on a tract alleged to be of value far in excess of the mortgage against it, within a period of approximately three years, the value is not there. Every day the purchaser at the foreclosure sale is kept out of possession increases his loss.'

"Upon the present record we cannot sustain the moratorium granted. The case must go back for a new trial. At such trial careful consideration should be given to the reasonable probability of a refinancing of the indebtedness within a reasonable time, say, for example, four months. In event refinancing seems probable, the mortgagee, during the interim, should receive a net amount out of the rental income of not less than \$250 per month. This would still leave \$200 per month with which to meet operating expenses, the payment of taxes and insurance.

"We note that Miss Shumaker has been occupying a suite of five rooms furnished with heat and that this has been done free from any charge. It also appears that a suite of law offices at \$27 per month has not been included as income but has been used by her in the payment of her attorney's fees in this and prior moratoria. The mortgagors must realize that the first claim against this property as between the parties belongs to the mortgagee. Thus far they have been riding as hitchhikers upon the first and prior contract right of the mortgagee. This cannot be tolerated."

CONTRACTS

(*Mixon v. HOLC*. Supreme Court of Arkansas. Decided January 1940.)

Person suing HOLC on contract alleged to have been made by its district manager must prove authority of district manager to make the contract.

In a foreclosure suit instituted by HOLC against W. P. Mixon and Catherine C. Mixon the defendants filed an answer and a cross complaint

alleging that HOLC was indebted to Catherine C. Mixon in the sum of \$856 for making twenty-three abstracts of title on properties owned by persons who had applied to HOLC for loans but which applications had finally been declined and rejected, and praying that this indebtedness be applied to the mortgage indebtedness owing to HOLC and thus relieve the apparent delinquency in payment thereof. The defendants claimed that Joe N. Martin, District Manager of HOLC at Jonesboro, Arkansas, had agreed and contracted with Catherine C. Mixon that, regardless of whether applications might be later rejected, HOLC would pay for abstracts prepared by her on property described in applications for loans, provided HOLC had written to the applicants, after approval of applications, to send in an abstract. In affirming the judgment of the trial court dismissing the defendants' cross complaint and rendering a decree of foreclosure in favor of HOLC, the Supreme Court of Arkansas said:

"The record reflects that Joe N. Martin was the district manager of appellee and that he was in complete charge of the corporation's district office at Jonesboro. Appellant, Catherine C. Mixon, testified that Joe N. Martin agreed that appellee would pay for abstracts which were prepared by her to property described in applications for loans by the property owners to the Home Owners' Loan Corporation, provided the Home Owners' Loan Corporation wrote to the applicant, after approval of the loans, to send in the abstract of title to the property, and that when an applicant brought the letter of authorization to her she would prepare the abstract and send it to the Home Owners' Loan Corporation accompanied by the letter; that the Home Owners' Loan Corporation paid her for all the abstracts she prepared where the loan went through, but had never paid her for the abstracts where the loans were not made. Several witnesses corroborated her in this statement.

"Joe N. Martin and a number of witnesses for the appellee denied making this contract with appellant, Catherine C. Mixon, and he was corroborated in this denial by a number of witnesses. Joe N. Martin also testified that he had no authority to make such contracts.

"Judge R. F. Millwee testified that he was state manager for appellee and that he was familiar with the rules and regulations of appellee and its business customs; that the custom was when the application had reached the eligible stage to make a loan and the applicant was not financially able to pay for the abstract they would pay for it and include it in the loan provided the applicant had sufficient equity after paying everything else connected with the loan and the original mortgage and interest to include in the loan the amount due for the abstract of title, but that no abstract of title was ever paid for if the loan was not made; that the final direction approving loans was made out

of the state office over his signature and that the district manager had no final authority to make loans; that under the rules and regulations no one other than the state manager and possibly the state counsel had authority to bind appellee by contracts.

"The burden was upon appellants to not only prove that a contract of the character alleged was made and entered into, but also that the district manager of appellee had authority to make such contracts.

"We deem it unnecessary to determine whether such a contract was entered into because appellants have wholly failed to meet the burden upon them to prove that Joe N. Martin had authority to make a contract to pay for abstracts of title to lands embraced in applications for loans.

"Having failed to meet this burden or to make proof that Joe N. Martin, district manager of appellee, had authority to make contracts to pay for abstracts furnished applicants for loans, the decree of the chancellor must be affirmed."

COURTS - UNITED STATES

(Helms v. Emergency Crop and Seed Loan Office, FCA, ----N.C. ---- 5 S.E. 2d 822.)

The Emergency Crop and Seed Loan Office, which is supervised by the FCA, is an "Agency of the United States Government", and enjoys the immunity against suit in state courts that attend the sovereign and can not be sued in a state court where acts under which it was created made no provision therefor.

The plaintiff brought this suit against defendant to recover damages for the conversion of lint cotton, upon which he alleged he had a rent lien, under the laws of North Carolina, superior to any title which the defendant might assert.

Defendant filed no answer and judgment by default was entered. Before the issue as to damages had been submitted defendant's attorney entered a special appearance and moved that the judgment be vacated and the cause dismissed because (1) Emergency Crop and Seed Loan Office is an agency of the FCA, an agency of the United States, created by executive order, and cannot be legally sued without its consent, and that plaintiff's action is without permission or authority; and (2) that the suit was not instituted nor service had in accordance with the laws of the United States.

Defendant's motion was denied and defendant appealed, assigning as error the refusal to allow the motion to dismiss.

The North Carolina Supreme Court in reversing the judgment of the lower court said: "The Act of Congress under which the Emergency Crop and Seed Loan Office, a branch of the Farm Credit Administration, was created by presidential edict, makes no provision by which it may be sued in the courts of this state. It is, however, an agency of the United States Government and enjoys the immunity against suit in the state courts that attends the Sovereign. North Dakota-Montana Wheat Growers' Ass'n. v. United States, 8 Cir., 66 F. 2d 573, 92 A.L.R. 1484; Buckley v. United States, D.C., 196 F. 429, page 430; Cohens v. Virginia, 6 Wheat, 264, 266, 5 L.Ed. 257. If the suit may be brought at all, it must be brought in accordance with the Acts of Congress regulating such suits. 28 U.S.C. A. §§ 761, 762, 763.

"The want of reciprocity in securing relief for wrongs committed by an agency given such wide power of dealing with the citizens of the state,--and almost certain to complicate the rights of others,--is a subject that might appeal to the law-making bodies, but one over which this court has no jurisdiction. United States v. Wickersham, C.C., 10 F. 505. The propriety of adjustment of matters of this kind through administrative process or other methods which the Government may have seen fit to provide is not subject to criticism here.

"This court is without power to aid the plaintiff, and the judgment of the court below is reversed."

FEDERAL CORPORATIONS

(HOLC v. Donald A. Gordon, et al. District Court of Appeals of California, Third Appellate District. January 1940.)

One who procures a loan from HOLC cannot question the validity of its creation. FHLBB is not a corporation. HOLC is not a foreign corporation in California.

In a foreclosure suit instituted by HOLC in a state court in California the defendant borrowers raised two questions: First that the FHLBB is a corporation and was authorized by Congress to create the HOLC, and by so directing, Congress was attempting to delegate authority to one corporation to create another corporation; and second, that HOLC could not sue in a state court in California without complying with the provisions of the California Civil Code, particularly sections 405, 406, 408 and 278 requiring it to file articles of incorporation with the Secretary of State of California, and having a resident agent in said state, as is done by foreign corporations transacting business in California. The trial court overruled both questions and entered final

foreclosure judgment from which the defendant borrowers appealed to the District Court of Appeals of the Third District. That court affirmed the judgment of the trial court, and in so doing said:

"An examination of the acts of Congress creating the Federal Home Loan Bank Board (Federal Home Loan Bank Act, chap. 11, secs. 1421 to 1449, inclusive, title 12, Banks and Banking, U.S.C.A., and particularly section 1437, which provides for the creation of the Federal Home Loan Bank Board with its powers and duties), reveals that such board is authorized to perform administrative duties only and does not possess any of the attributes of a corporation. Furthermore, appellants, as makers of the note secured by the mortgage, having contracted with the respondent as a corporation and received the benefits of that contract, are now estopped to deny as against the corporation, in an action to enforce such contract, that it has been legally organized or to assert in any manner any defect or irregularity in such organization. This rule is established by a long line of authorities, among others being *Grangers' Business Assn. of California v. Clark*, 67 Cal. 634, 8 Pac. 445; *Bank of Shasta v. Boyd et al.*, 99 Cal. 604, 34 Pac. 337; *McCann v. Children's Home Soc. of California*, 176 Cal. 359, 168 Pac. 357; *Raphael Weill & Co. v. Crittenden*, 139 Cal. 188, 73 Pac. 238; *Curtin v. Salomon*, 80 Cal. App. 470, 251 Pac. 237; *Gregory v. Hecke*, 73 Cal. App. 268, 238 Pac. 787.

"The answer further attempts to allege, upon information and belief, that plaintiff has not complied with the provisions of the Civil Code. This violates the rule of pleading, which requires that matters of record must be alleged positively and not upon information and belief. This rule is particularly applicable to a pleading in abatement which, being dilatory in its nature, is to be strictly construed (*California Savings & Loan Society v. Harris*, 111 Cal. 133). In *Purexo Products Co. v. Yamato*, 98 Cal. App. 65, defendant attempted to deny certain allegations on information and belief, and the court held that at least as to matters of record in the office of the secretary of state, such a denial was insufficient.

"To the same effect are *Brinkley-Douglas Fruit Co. v. Silman*, 33 Cal. App. 643; *William Wilson Co. v. Trainor*, 27 Cal. App. 43; *Art Metal Construction Co. v. A. F. Anderson Co.*, 182 Cal. 29; *Smith v. Fidelity & Deposit Co. of Maryland et al.*, 130 Cal. App. 45.

"Furthermore, respondent being incorporated under an act of Congress known as Public Act No. 47-73d. Congress title 12, chapter 12, sections 1461-1468, inclusive, U.S.C.A., this court will take judicial notice of such fact. *Fletcher on Corporations*, volume 8, section 4116,

states the rule as follows: 'The Federal Corporations chartered by special public act of Congress, and their names, are judicially noticed both in the Federal and State courts.'

"This doctrine of judicial notice in federal courts is applied in the case of Texas and Pacific Ry. Co. v. Cody, 166 U.S. 606, and in Hiatt v. United States, 4 Fed. (2d) 374. In Young et al v. Boy Scouts of America, 9 Cal. App. (2d) 760, the courts of California took judicial notice of the fact that the Boy Scouts of America is incorporated under an act of Congress. Therefore, if the courts took judicial notice of Home Owners' Loan Corporation as a corporation created by the federal statute it need not comply with the state laws governing foreign corporations. In Thompson on Corporations, volume 8, third edition, section 6592, the rule is given as an exception to the general rule of unlimited state control over foreign corporations, and corporations engaged in the business of the federal government may transact such business in other states without obtaining a license or other permit."

FIXTURES

(HOLC v. James Breshia, et al. Supreme Court, Onondaga County, New York. Decided January 5, 1940.)

Fixtures installed in realty under conditional sales contract without knowledge or consent of mortgagee in prior recorded mortgage of realty and which cannot be removed without damage to the realty are subject to the lien of the mortgage of the realty and cannot be removed by the vendor in the conditional sales contract.

In an HOLC foreclosure suit a controversy arose between it and the Trustee in Bankruptcy of National Radiator Corporation with reference to the right of the Trustee to remove a hot water heating plant and certain plumbing fixtures installed in the premises about two years after the recording of the HOLC mortgage by one Anthony Vescera, without the knowledge or consent of HOLC; under a conditional sales contract with the mortgagor of the realty to HOLC, James Breshia, which conditional sales contract was recorded and then assigned to the National Radiator Corporation. The HOLC mortgage contained the following, namely: "Together with all fixtures and articles of personal property, now or hereafter attached to or used in connection with the premises, all of which are covered by this mortgage". It also provided "that no building fixtures or personal property covered by this mortgage shall be removed or demolished without the written consent of the mortgagee".

At the time the conditional sales contract was entered into

between Vescera and Breshia, there were two furnaces in the premises. They were in good condition, only two years old and properly heated the property which at that time was divided into only two apartments. Breshia, however, was remodeling the premises so as to divide it into five small apartments. Vescera removed the two furnaces and installed the hot water heating system. Such removal would have materially depreciated the value of the property had not the hot water heating system been installed. Vescera also installed a tub and other bathroom fixtures. The tub was built into the side of the wall of the bathroom and the other bathroom fixtures were so fastened to the floor and side walls that they could not be removed without material injury to the building. To install the bathroom fixtures and the heating plant holes had to be cut through the floors. Leader pipes from the hot water heater were carried up through these holes from the cellar to the first and second floors and radiators were installed upon each of the floors. These leader pipes and radiators could not be removed without material damage to the building. It appeared, however, that the leader pipes from the hot water heater could be detached at the boiler and that the boiler could be taken down in sections and removed without material damage to the building, but not without some impairment of the property as mortgage security to HOLC.

Under the facts as hereinbefore stated, the court denied the right of the trustee to remove any of the property that Vescera had installed under the conditional sales contract with Breshia except that he was given the right to remove the boiler by disconnecting the leader pipes close to the boiler, but without interference with any of the other fixtures.

FIXTURES - REALTY

(McDowell v. King, et al.----Okla.----, 96 Pac. (2d) 37.)

In absence of a sufficient showing to the contrary, a building located on a tract of land will be presumed to be part of the land and is therefore "realty". Where one affixes his property to another's realty without an agreement permitting him to remove it, the property so affixed belongs to the owner of the realty.

The facts of this case, in brief, are that a small two-room house was built upon a vacant lot and lived in for about two years, and was in turn sold to various persons. The owner of the lot told the last purchaser that he could have it if it was removed without delay. This was not done. The plaintiff did not offer any testimony that permission had been given to the man who originally built the house. On the con-

trary, plaintiff's counsel took the view that that person was a "squatter".

The court in denying the plaintiff in error's suit for replevin said in part: "... Section 11730, O.S., 1931, 60 Okl. St. Ann. sec. 334, provides: 'When a person affixes his property to the land of another without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require or permit the former to remove it . . .'.

"In Etchen v. Ferguson, 59 Okl. 280, 159 P. 306, it was said: 'When a person affixes his property to the land of another without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land'.

"In the case of Bridges v. Thomas, 8 Okl. 620, 58 P. 955, cited by plaintiff in error, it was held: 'In the absence of a sufficient showing to the contrary, the law will presume that a building located upon a tract of land is part of the land it occupies, and is therefore real property'.

"Objection is made to the instruction given the jury. We find the instruction more favorable to plaintiff in error than required, in that an issue of a gift of the house in question was submitted, whereas in brief and in record the plaintiff in error did not rely upon defendant's generosity."

FIXTURES - REALTY

(Dudzick, et al v. Lewis, et al. ----Tenn.----, 133 S.W. 496.)

Generally the controlling consideration whether a chattel annexed to realty becomes a part thereof and the property of the lessor depends upon the intention of the parties to the lease, and not the manner of annexing the chattels to the realty.

The defendant and his wife leased an acre of ground on a highway for the purpose of constructing and operating a tourist camp thereon. The lease was for a term of five years and provided that the lessee "agrees to construct on said lot one cabin within thirty days from this date and agrees also to improve present buildings at lessee's expense". Shortly afterwards defendants constructed six tourist cabins.

The owner of the property sold it to a Mrs. Sullivan who in turn

sold it to complainants. Shortly after the lease expired the defendants removed five of these cabins to a lot across the highway which they had purchased, and the complainants instituted suit to compel defendants by mandatory injunction to replace said cabins.

In upholding the opinion of the Chancery Court which had granted the relief prayed for, the Tennessee Supreme Court said: "It is now the generally recognized rule that the manner of annexing chattels to realty is not the controlling consideration in determining whether or not the chattels become a part of the realty. The question of the intention of the parties to a lease is generally held to be controlling in determining in doubtful cases whether or not a chattel annexed to realty becomes a part thereof and the property of the lessor.

"Considering the lease in question, there can be no doubt it was the intention of the lessor, Mr. Fletcher, that the improvements placed by the lessees upon these premises should become a part of the freehold. The lease required the lessees to construct one cabin on the premises within thirty days, and specified that the premises were to be used in operating a filling station, restaurant, store, dwelling and tourist camp. The fact that the lease required that one cabin should be erected within thirty days evidenced the interest of the lessor in having her property improved by buildings that would become a part of the freehold, and which would revert to her at the termination of the lease. . . .

"Another rule adhered to by the courts in deciding questions of this character is whether the removal of buildings or any chattels attached to the land would cause substantial damage to the freehold. If it would, they cannot be removed. There can be no doubt that the removal of these five cabins and the shed caused substantial damage to the freehold . . . and greatly reduced its value. In fact, by their removal the tourist camp was destroyed, only one cabin being left.

"In *Knoxville Gas Company v. W. I. Kirby & Sons*, 161 Tenn. 490, 496, 32 S.W. 2d 1054, 1055, this court announced the applicable rule as follows: 'Modern authorities all agree that the most controlling test of the question whether property connected with real estate is to be deemed realty or a mere chattel, removable at the pleasure of the owner, is the intention and purpose of the erection. . . . But the intent and the nature of the property, taken as a whole, as the parties purchased it and treated it, concurred in making it a part of the freehold, and stamped it as realty, and it must so be held.'

"If defendants desired or contemplated retaining the right to remove these small cabins from the premises at the termination of their lease, they should have so contracted in the lease. It is worthy of

note that the shed attached to the filling station which was removed by defendants had unquestionably become a part of that building."

HOMESTEADS - EXEMPTIONS

(Southern Pac. Milling Co. v. Milligan, et al. District Court of Appeal, Second District, Div. 2, California, 96 Pac. (2d) 1010.)

Exemptions from attachment are creatures of statute and the courts are powerless to add to or subtract from the list of exemptions. Realty upon which a homestead declaration was filed prior to levy of attachment was subject to attachment, since the entire tract was not necessarily exempt, and the attachment could not possibly injure the owners.

An action was brought by plaintiff against defendants on a book account for merchandise, resulting in the attachment of a farm and home of defendants. After the hearing of a motion to discharge the writ upon the ground that as a homestead it was exempt from attachment, the trial court released the levy and plaintiff appealed.

The question is whether realty upon which a homestead declaration has been filed can be validly attached. In holding that it can and in reversing the decision of the trial court this court said: "Courts are powerless to add to or to subtract from the list of exemptions. In re Estate of Brown, 123 Cal. 399, 55 P. 1055, 69 Am. St. Rep. 74. 'The Legislature will protect, by law, from forced sale a certain portion of the homestead.' Const., art. XVII, sec. 1. The homestead is exempt from execution or forced sale except (1) where the declaration has not been filed prior to issuance of the execution (Civ. Code, sections 1240, 1241), and (2) where, after receiving the report of appraisers, the court orders a sale in those instances in which so much of the land and the residence cannot be set off to the claimant 'as will amount in value to the homestead exemption'. Civ. Code, sections 1253, 1254. But, because only that property may be attached under section 540 of the Code of Civil Procedure, which is not exempt from execution, it is contended by defendants that their homestead is not subject to attachment because their declaration was of record prior to its attachment.

"There are two answers to those contentions: (1) Since the homestead is not exempt if the appraisal and partition proceedings provided for under sections 1245--1254 are followed, it may be said to consist of the debtor's legal homestead and the creditor's equity. If

it can be partitioned in such manner as to have the house and an area of ground worth \$5,000 set aside as a 'homestead', the balance is subject to levy and sale. If such partition cannot be made, the entire property must be sold, if a bid in excess of \$5,000 be received (Civ. Code, sec. 1255), the \$5,000 paid to the claimant and 'the balance applied to the satisfaction of the execution'. Civ. Code, sec. 1256. The parcel detached from the homestead or the excess of the sale value over \$5,000 may be termed the creditor's equity. Since it is subject to sale under execution, it is also subject to attachment as in the case of any other nonexempt property.

"Moreover, no provision is made for appraisal proceedings and order in the case of attachment. The statute for that remedy merely requires a sheriff 'to attach and safely keep all the property of . . . defendant . . . not exempt from execution'. Code Civ. Proc. sec. 540. This is not equivalent to a levy of an execution. It is harmless as to the debtor, for if the homestead can or cannot be sold for a sum in excess of \$5,000, no possible injury can befall the claimant. On the one hand, he gets his \$5,000 or a detached parcel of that value, on the other, he remains secure in his undivided ownership."

HOUSING AUTHORITY ACTS

(Matthaei v. Housing Authority of Baltimore City. Maryland Ct. App. Dec. 21, 1939, 8 L.W. 112.)

Project would be void if it contemplated construction of new housing for persons other than slum dwellers for whom new housing is made necessary by slum clearance.

A particular project of the Housing Authority of Baltimore under the Maryland statutes enacted in furtherance of the housing program of the Federal Government would be void if, as contended in this case, it were not a slum-clearance project contemplating the construction of new housing for so-called slum dwellers. The housing program is one for slum clearance and the housing of persons or families whose incomes are so low that they must live in the prescribed conditions. The purpose of the program is to relieve slum dwelling. This appears from both the Federal Act and the state statutes.

The statutes, if construed to provide for housing for persons other than slum dwellers, whose incomes are so low that they cannot provide themselves with the necessary living conditions, would be of "questionable constitutionality".

The lower court erred in sustaining a demurrer of the Housing

Authority to the complaint of a taxpayer for an injunction restraining the Authority from proceeding with the project on the theory that it is not a project such as is contemplated by the statutes. The complaint states a cause of action.

It alleges that the project is not one for rehousing slum dwellers, but on the contrary is one for housing persons or families in better conditions; that the housing is to be constructed in the outskirts of the city where there is no demand for additional housing; that the rehousing of all persons to be removed from slum dwellings is amply provided for in other projects undertaken or planned by the Authority; that the Authority has not found any overcrowding in dwellings which would demand relief by the additional housing; and that according to statements of officials of the Authority the housing contemplated by the project is intended for persons or families with incomes up to \$1,500 a year.

"Assuming that the housing already projected is to be availed of as fully as possible, it would follow from these averances that occupants of the additional housing must be found among people living elsewhere and capable of housing themselves in conditions better than those to be cleaned out. The court has come to the conclusion that while the averance might, perhaps, be made more explicit, the bill makes it sufficiently clear that what it seeks to restrain is a departure from the work of eliminating the threatening conditions which would justify defensive action by the local government . . .

"The statute, as the court construes it, has the single purpose of providing for the removal of the conditions which threaten the health and safety of the community, new housing being an incident because removal of people from those conditions requires rehousing free from those conditions and to some extent at least must require rehousing in new houses."

LANDLORD AND TENANT -- RIGHTS UNDER MORTGAGES

(Kelly v. Clement National Bank, ---Vt.---, 10 A 2d 201.)

Where, after condition of mortgage was broken, mortgagee notified tenant to pay rent to him there was a "constructive eviction" which extinguished tenant's liability for rent to mortgagor, and when tenant thereafter paid rent to mortgagee he thereby "attorned" to mortgagee and held possession of the property under mortgage.

In 1934 the plaintiff gave to defendant a mortgage upon some land. Upon default the defendant foreclosed obtaining a decree in

February 1937. Prior to March 9, 1938, the defendant had not interfered with the plaintiff's possession of the property or with collection of the rents from the tenant thereon, but on that date the defendant had a certified copy of its foreclosure decree recorded in the city clerk's office, and notified the tenant then in possession to pay rent to it. Rent for April and May was paid to defendant. Rent for June, July, and August was paid to plaintiff because the decree of foreclosure had been modified so as not to expire until August 31, 1938. This suit is for recovery of the rents paid to defendant. The plaintiff has not redeemed the property.

The effect of the modification of the decree of foreclosure was to restore the relation of the parties to that of mortgagor and mortgagee.

"The condition of the mortgage was broken. After condition [is] broken the mortgagee becomes at law the absolute owner of the property and is entitled to immediate possession, and may, without notice, enter upon the property and take possession thereof, if he can do so peaceably and unresisted. Crahan v. Town of Chittenden and Manning, 82 Vt. 410, 415, 74 A. 86; Fuller v. Eddy, 49 Vt. 11; Lull v. Matthews, 19 Vt. 322. When a lessee of the property in such case attorns to the mortgagee and becomes his tenant, as was done in this case when the tenant after notice to do so paid his rent to the defendant, there is a constructive eviction which extinguishes his liability to the mortgagor, and thereafter he can only be considered as holding possession of the property for the mortgagee. Stedman v. Gassett, 18 Vt. 346; Mason v. Gray, 36 Vt. 308; Trask v. Fountain, 93 Vt. 83; 106 A. 559.

"The defendant had the same right after the decree of foreclosure, as before, to take possession of the mortgaged property and to get the plaintiff's tenant to attorn to it, and it was liable to account to the plaintiff upon the mortgage debt for the rents received before the decree finally became absolute. Hill v. Hill, 59 Vt. 125, 128, 129, 7A.468. But it is not accountable at law for such rents. Chapman v. Smith, 9 Vt. 153; Seaver v. Durant, 39 Vt. 103; Hill v. Hill, supra."

MORTGAGES - DEFICIENCY JUDGMENTS

(FLB of Wichita v. Smet, et al.,----Okl.----, 95 Pac. (2d) 894.)

A trial court has no power to compel mortgagee in foreclosure to bid the full amount of its judgment or to release its deficiency judgment as a condition precedent to confirmation of the sale of the mortgaged realty, where the sale was held in compliance with statutory requirements.

This action was brought by the FLB of Wichita against defendants to foreclose a mortgage. Judgment was rendered for plaintiff and the sheriff thereafter sold the property, leaving a deficiency. The final court refused to confirm the sale unless the plaintiff released the deficiency judgment, notwithstanding the fact that the sale was regular and in conformity with the law. The plaintiff appealed and the court, in reversing the decision, said:

"The defendants in their brief do not give us any authorities to support the view taken by the trial court, but choose to rely on the theory that there was an emergency which justified the trial court in refusing to confirm the sale. They call attention to the fact that weather conditions prevented the raising of two crops and that a general depression in real estate existed, and that such conditions justify a judicial policy supporting the action of the trial court. Similar contentions were considered in *Local Building & Loan Association v. Marts et al.*, 174 Okl. 130, 51 P. 2d 492, 494, and it was there said:

"'However sympathetic we might be with that numerous class of persons who, in recent years, have suffered foreclosures of their properties or homes, it is not the function of the court or the trial courts of the state to attempt to establish such a public policy. The right to do so is legislative not judicial. In re *County Commissioners of Counties Comprising Seventh Judicial District*, 22 Okl. 435, 98 P. 557, 558.'

"We have held in *Local Building & Loan Association v. Compton, et al.*, 177 Okl. 168, 58 P. 2d 127, that: 'Trial courts are without authority or power to compel a judgment creditor in foreclosure cases to bid the full amount of its judgment, or to release its deficiency judgment as a condition precedent to confirmation of sale of real property, where the sale has been held in compliance with statutory requirements.'

"We consider these cases controlling here."

MORTGAGES - EXTENSIONS

(*Martha Louise Pritchard, et al v. HOLC*, Chancery Court of Shelby County, Tennessee. Decided January 1940.)

Mead Act which extends time of payment of loans to HOLC from 15 to 25 years, held permissive only and not to require HOLC to extend or revise its loans contrary to discretion of its officials.

Mrs. Pritchard, a mortgagor to HOLC, filed suit to enjoin HOLC from foreclosing its mortgage upon the allegation that HOLC had breached

an alleged agreement to defer foreclosure upon the payment of certain sums which complainant had made. A preliminary injunction restraining the foreclosure was issued but was later dissolved. The foreclosure was proceeded with but before a sale could be held complainant filed an amended bill seeking to enjoin the sale. The court refused to issue a preliminary injunction and a foreclosure sale was held at which HOLC bid in the property. Thereafter complainant, an endorser on her note to HOLC, and two of her relatives who were willing to endorse her note, filed an amended and supplemental bill and intervening petition seeking to prevent confirmation of the foreclosure sale and to require an extension and revision of complainant's loan under the Mead Act.

On final hearing the court held that HOLC had breached no agreement with Mrs. Pritchard to defer foreclosure and had done nothing to entitle her to an injunction against the foreclosure of its mortgage. With reference to the contention as to the Mead Act, the court said:

"It further appears to the court that the Act of the Seventy-sixth Congress known as the Mead Act, relied on by complainant as mandatory and as requiring the defendant, Home Owners' Loan Corporation, to grant an extension and revision of complainant's indebtedness to said defendant, is not mandatory but that said Act by its terms is permissive only and vests in the officials of the Home Owners' Loan Corporation the discretion and power to determine what, if any, loans should be extended or revised and that complainant is entitled to no relief under the terms of said Act."

The court then confirmed the foreclosure sale to HOLC, dismissed the bills and intervening petition, awarded possession to HOLC and held it entitled to a judgment for damages and rent during the time it was out of possession as a result of the litigation.

MORTGAGES - FORECLOSURE

(Wright v. Nothnagel, et al.----Ore.----, 96 Pac. (2d) 228.)
The holder of a purchase money mortgage who elected to fore-
close the mortgage was barred from obtaining a deficiency
judgment against any of the makers of the note or mortgage,
and could look only to the sale of the mortgaged land for
payment of the debt, since, by electing to pursue the reme-
dy of foreclosure, the makers of note and mortgage were re-
leased from personal liability.

The question presented in this case, without going into the details of the facts submitted, "is whether the lower court had any authority

to enter a personal judgment against the makers of a promissory note given to secure the balance of the purchase price of land, in foreclosing a mortgage given as security therefor, where the court found and it was admitted in the suit that the note and mortgage were a purchase price note and mortgage, in the face of section 6-505, Oregon Code 1930, which provides:

"When judgment or decree is given for the foreclosure of any mortgage, hereafter executed, to secure payment of the balance of the purchase price of real property, such judgment or decree shall provide for the sale of the real property, covered by such mortgage, for the satisfaction of the judgment or decree given therein, and the mortgagee shall not be entitled to a deficiency judgment on account of such mortgage or note or obligation secured by the same."

The Supreme Court held that the lower court had no such authority and said: "Before commencing her suit to foreclose her purchase price mortgage, the plaintiff had a choice of two remedies. She had the right to elect whether to foreclose the mortgage and secure payment of the debt by a sale of the mortgaged land, or to bring an action against the parties personally liable for the debt. It being a purchase price mortgage, she could not do both. Having elected to foreclose the mortgage, she was inhibited by the statute from ever obtaining a deficiency judgment against any of the makers of the note or mortgage and could look only to the sale of the mortgaged land for the payment of the debt. In electing to pursue the remedy of foreclosure, she thereby released the makers of the note and mortgage from any personal liability on account of the note or mortgage. See *Marshall v. Middleton*, 100 Or. 247, 191 P. 886, 196 P. 830, 19 A.L.R. 1421; *Wright v. Wimberly*, 94 Or. 1, 184 P. 740; and *Lutz v. Blackwell*, 128 Or. 39, 273 P. 705.

"The fact that the land described in her mortgage was subject to the prior liens of other mortgages does not relieve her from the results flowing from her election to foreclose rather than to bring an action at law against the makers of the note. The result of the election is the same as if there had been no prior liens and, having made such election and having thereby released the makers of the note from any personal liability thereon, the defendants are relieved from any further obligation upon the note and mortgage . . .

"That the plaintiff is not entitled to equitable relief in this suit is also obvious for this reason: If, as she contends, the decree of foreclosure in her suit had the force and effect of a personal judgment against the makers of the note, she could have no need for equitable relief since all she would have to do would be to have execution issued and a sale made of the property, or she could enforce the execution

against any property belonging to the defendants in the suit, including any of the mortgaged property now owned by any of said defendants. Having thus a complete and adequate remedy at law, there would be no need for the interposition of a court of equity. This, however, she cannot do because of the force of the statute, which prohibits her from so doing."

TAXATION - EXEMPTION OF HOUSING PROJECTS

(Laret Investment Company v. Dickmann, et al. Decided December 5, 1939. Supreme Court of Missouri.)

A housing authority is a municipal corporation within definition of taxation statute and is exempt from being taxed.

This was a suit to enjoin the execution of a cooperative agreement between the City of St. Louis and the Housing Authority of the City of St. Louis, on the ground that said agreement attempted, in violation of the Constitution of Missouri, to exempt the property of the housing authority from taxation. A demurrer to the petition was sustained from which an appeal was noted.

The sole question raised was whether the property of the housing authority was exempt from taxation. The Missouri Constitution provides: "The property, real and personal, of the state, counties, and other municipal corporations . . . shall be exempt from taxation. All laws exempting properties from taxation, other than the property above enumerated, shall be void."

After reviewing the provisions of the housing act of the state the court stated: "The Act does not expressly provide that the property of the Authority shall be exempt from taxation, but does expressly declare that the Authority is a municipal corporation incorporated for essential public purposes. Section 9743, Revised Statutes Missouri 1929; . . . exempts from taxation 'lands and other property belonging to any city, county or other municipal corporation in the state'. However, the absence of any express exemption in the Act is of no consequence, because the constitutional provision above quoted is self enforcing and controlling. If the Housing Authority created under the Act is a valuable municipal corporation, performing an essential public function, then the property of the Authority is exempt from taxation without any statutory declaration to that effect, and its property would be exempt even if the Act had declared it taxable."

After pointing out that the term "municipal corporation" is sometimes used in a strict sense and sometimes in a broad sense, the court decided to adopt the broader definition which requires that a

municipal corporation is one formed for the purpose of performing some governmental function and that since the legislature had declared a housing authority a municipal corporation, such finding was entitled to great weight.

After citing housing authority opinions from other jurisdictions holding that the property of housing authorities is exempt from taxation because performing an essential public function, the court approved such rulings and held the property of housing authorities in the State of Missouri exempt from ad valorem or property taxes.

TAXATION - REDEMPTION

(HOLC v. Wilford Stevens, et al. Supreme Court of Utah. January 1940.)

In publication of May tax sales under Section 80-10-68, Revised Statutes of Utah there must be an elapsed time of 28 days between the first publication and the day of sale. Person receiving tax deed from county following void May sale takes title subject to prior mortgage.

In a foreclosure suit by HOLC in Utah the borrowers made no defense but one Peterson and his wife claimed title to one parcel of the realty under foreclosure free and clear of the HOLC mortgage. They held a quitclaim deed from the borrowers and had also purchased the parcel from Sevier County, Utah, and had received a tax deed therefor. The facts were as follows:

The county received a tax deed for the parcel which had been sold for delinquent taxes; thereafter the Board of County Commissioners advertised the property and a "May" sale was held, and still later Peterson and wife received a deed from Sevier County. Peterson and wife, prior to the "May" sale, had also received a quitclaim deed from the mortgagors to HOLC.

HOLC attacked the validity of the "May" sale because it had not been advertised in accordance with Section 80-10-68, Revised Statutes of Utah, 1933, as amended, which required "May" sales to be held, "after publication, once a week for four consecutive weeks preceding the date of sale". On this question the court said:

"We construe Section 80-10-68, supra, in view of the context, to prescribe that notice of the May sale shall be given by publication of such notice once a week for four consecutive weeks and that the four weeks notice - that is, twenty-eight days - should be given, measured

from the date of first publication. The findings in this case that the first publication of notice of the May sale was made on April 30 and that the sale was held on May 22, after four weekly publications, reveals that only twenty-two days elapsed between the date of first publication and the date of sale. Under the construction of the statute indicated this was insufficient notice."

Having held the May sale void, the court held that Petersons' receipt of the deed from the county put them in the same position in which they would have been had they received the deed immediately before the void May sale, i.e., a "redemption" under that part of Section 80-10-68, Revised Statutes of Utah which provides that "the Board of County Commissioners shall at any time after the period of redemption has expired and before the (May) sale as herein provided, permit a redemption from any sale where the property has been sold to the county". Having "redeemed" the property and also having received a quitclaim deed from the mortgagors to HOLC, Peterson and wife were held to have taken no new title but to have taken the old title subject to the mortgage of HOLC.

UNITED STATES - LIMITATION OF ACTIONS AGAINST

(United States v. Thomas, et al. Circuit Court of Appeals, Fifth Circuit, 107 F. 2d. 765.)

The FCA is not a commercial adventure, but is merely intended to lend aid and assistance to farmers who have no credit and no money with which to purchase feed for their livestock and seeds for their crops. The United States, when asserting sovereign or governmental rights, is not subject to either state statutes of limitations or to laches.

The United States filed suit in eight cases against Thomas Brothers, a partnership, and others. In six of the cases it sought to recover against farmers who had borrowed money from the FCA, /The loans here involved were those of the Emergency Crop and Feed Loan Section of the FCA./ and in each of the eight cases it sought to hold Thomas Brothers liable in tort and conversion for disposing of cotton which they had purchased from these six farmers and two others, and upon which the FCA held a chattel mortgage lien.

The eight cases were consolidated and tried together. The defendant farmers failed to appear and judgment was entered against each of them. Thomas Brothers answered the complaints and set up these two defenses:

"1. That the United States through the conduct and acts of its agents and employees, had waived the chattel mortgage lien on the cotton.

"2. That the suits were filed more than two years after the alleged conversion and were, therefore, barred by the Texas Statute of Limitations."

The court sustained the defenses and entered judgment for defendants and the government then appealed from this judgment.

In reversing the judgment the Circuit Court of Appeals said: "The legislation which gives life to the FCA takes the precaution to avoid competition with private lending agencies. Its purpose is to create an agency to make loans to distressed farmers. It is expressly provided, among other things, that loans shall not be made to applicants who can obtain credit elsewhere. When these farmers sought loans they were required to furnish proof that they could not procure loans from any other money lending agency. The government was not seeking by this legislation to enter business and make money. It was simply trying to lend aid and assistance to farmers who had no credit and no money with which to purchase feed for their livestock and seeds for their crops. We think it clear that Farm Credit Administration was in no sense a commercial adventure. *North Dakota-Montana Wheat Growers' Ass'n v. United States*, 8 Cir. 66 F. 2d 573, 92 A.L.R. 1484; *White v. United States et al.*, 270 U.S. 175, 46 S.Ct. 274, 70 L.Ed. 530; *Wilber Nat. Bank v. United States*, 2 Cir., 69 F. 2d 526.

"When loans were made, the government took the borrower's note and a chattel mortgage which provided that the producer could not dispose of his cotton without the written consent of the Governor of the Farm Credit Administration. The mortgages here were recorded. Moreover, it is without dispute that the government had furnished a list of all borrowers to the defendants' cotton buyer. Agents or employees of the government had no authority to waive the chattel mortgage liens. Waiver was not a good defense to this suit. *Wilber Nat. Bank v. United States*, 2 Cir., 69 F. 2d. 526; *United States v. Standard Oil Co. et al.*, D. C., 20 F. Supp. 427.

"There is no merit in the contention that the Government claims were barred by the Texas Statute of Limitations. Congress has manifested no intention to be bound by such statutes and it is 'settled beyond controversy that the United States when asserting 'sovereign' or governmental rights is not subject to either state statutes of limitations or to laches." *Chesapeake & D. Canal Co. v. United States*, 250 U. S. 123, 39 S.Ct. 407, 408, 63 L.Ed 889; *United States v. Nashville, C. & St.L.R.Co.*, 118 U.S. 120, 6 S.Ct. 1006; 30 L.ed.81; *Phillips et al v. Commissioner*, 283 U.S. 589, 51 S.Ct. 608, 75 L.ed. 1289."

ZONING

(Philadelphia Fairfax Corporation v. McLaughlin, et al.---- Pa.----, 9 Atl. (2d) 538.)

Where chancellor found that neighborhood was exclusively residential but court in banc handed down an amended finding that neighborhood was a mixed commercial and residential district, and thereupon dismissed appeal from grant of certificate of exception authorizing issuance of a use registration permit, the Supreme Court was required to examine the entire record; and after examining the record it came to the conclusion that the question as to whether a particular locality is commercial or residential in character is a matter that lies within the discretion of the court below.

"The Zoning Board of Adjustment of Philadelphia granted a certificate of exception authorizing the issuance of a use registration permit to the intervening defendants, Leewright and Black, for the operation of an open air parking lot on the property of the Divinity School of the Protestant Episcopal Church at the southeast corner of Forty-third and Locust Streets. At the public hearing, appellant, the owner of a large apartment house on the northeast corner, objected to the granting of the permit and appealed from the determination of the Zoning Board to the Court of Common Pleas."

The chancellor found that the neighborhood was "exclusively residential" in character, but concluded that the proposed use would not amount to a nuisance per se or in fact and, therefore, it was permissible to operate a parking lot in the locality. Exceptions were taken to these conclusions and the court in banc, with concurrence of the chancellor, handed down an amended finding that the neighborhood was a "mixed commercial and residential district", and dismissed the appeal.

The Supreme Court after careful examination of the record, found "that the action of the court in banc was fully justified in amending the finding of the chancellor that the neighborhood was a 'mixed commercial and residential district'." The court went on to say further that:

"As we said in Calvary Presbyterian Church v. Jones, 322 Pa. 77, 80, 185 A. 267, 268: 'The question as to whether a particular locality is commercial or residential in character, and whether a proposed use of land within it would constitute an unreasonable infringement upon property rights of the inhabitants, is a matter which lies within the sound discretion of the court below, and its findings, when supported by evidence, will not be interfered with on appeal in the ab-

sence of manifest abuse of discretion. *Duty v. Vacuum Oil Co.*, 317 Pa. 15, 21, 175 A. 522; *Nesbit v. Riessenman*, 293 Pa. 475, 487, 148 A. 695; *Ladner v. Siegel*, 293 Pa. 306, 307, 311, 142 A. 272.¹ See also *White v. Old York Road Country Club*, 318 Pa. 346, 178 A. 3."

ZONING

(Texas Sup. Ct.; *West University Place v. Ellis*, Jan. 3, 1940. 8 L.W. 147.)

Ordinance placing in residential district property which is practically worthless except for business purposes is unconstitutional as to owner.

A zoning ordinance of a Texas city placing in a "single-family dwelling district" a lot which is valuable only as business property and which has but little, if any, value as residential property, is unconstitutional as to the owner of the lot in that it deprives him of his property without due process of law.

A residence on the lot would be located within a few feet of a drug store and liquor store, and practically upon the brink of a deep drainage ditch carrying a considerable flow of water. The lot faces upon the principal street. Another street opens into such street directly across from lot. A residence located on the lot would be subjected to all the discomforts and inconveniences of a constant stream of traffic. A business is conducted on an adjoining lot.

Enforcement of the ordinance would make the property practically worthless and would, therefore, constitute confiscation of the property in violation of the due process clause.

Although the lot is on the boundary between a business district and a residential district, the ordinance cannot be sustained on the theory that its incorporation in the residential district was in furtherance of a general plan designed for protection of the city as a whole. An ordinance will not be sustained on such theory if the attempted protection of the public involves an oppressive loss to the property owner.

Furthermore, the placing of the particular lot in the residential district is not an essential part of the general scheme, "and the protection accorded to the general public by its inclusion therein is negligible compared to the manifest depreciation in the value of said lot by excluding it from the business district."

ZONING

(Application of Kingsway Plumbing Supply Co., Inc., Supreme Court, Appellate Division, Second Department, 15 N.Y.S. 2d 833.)

Those opposing the erection of a building on the ground that the proposed use would be disturbing were required to show that noise would be so injurious, noxious, or harmful to the people in the community that its continuance would undermine their health, and that such harmful noise would result from proposed use of the building which owner sought to erect.

This was a proceeding brought to review the determination of the Board of Appeals of the Village of Floral Park and of the Village Building Inspector and the Village Clerk denying the application of the petitioner for a permit to erect an additional building upon its premises. The permit was denied on the ground that the proposed use of the building sought to be erected would violate certain subdivisions of section 16 of the local zoning ordinance.

The court held that the proposed use did not violate any of the provisions of the zoning ordinance. It said: "With respect to the alleged violation of subdivision 3 (c), the only proof in the record is that the noise created by the use of the existing building is disturbing to the objectors. Successfully to invoke this subdivision it was incumbent upon the objectors or respondents to show (a) that the noise would be so injurious, noxious or harmful to the people in the community that its continuance would undermine their health; and (b) that such harmful noise would result from the proposed use of the building sought to be erected. There was no such proof."

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

CIVIL SERVICE COMMISSION published a notice of the condition of the apportionment as of the close of business on Friday, December 29, 1939. See 5 Fed. Reg. 65.

FARM CREDIT ADMINISTRATION: The President of the FLB of Wichita by regulations filed January 25, amended the schedule of loan application and reamortization fees charged by that bank. See 5 Fed. Reg. 299.

FARM SECURITY ADMINISTRATION: The Secretary of Agriculture, by a memorandum filed January 29, amended the Rules and Regulations with regard to the purposes for which loans may be made. See 5 Fed. Reg. 337.

FEDERAL HOME LOAN BANK BOARD: The FHLBB, by resolutions filed December 29: (1) authorized the General Manager with the advice of the General Counsel to make extensions, reamortizations, etc.; (2) authorized the setting up of a Tax and Insurance Account for any home owner; (3) prescribed the organization, functions and duties of the Appraisal Section of the Appraisal and Reconditioning Division; (4) authorized the Legal Division to control and supervise the execution and contents of extension agreements; and (5) amended the Code of Federal Regulations with regard to the application of remittances received from a home owner and of funds received from partial releases, insurance losses, etc. See 5 Fed. Reg. 2-7.

The FHLBB, by orders filed January 18, amended the Code of Federal Regulations (1) with regard to foreclosure policy where the junior lien is being foreclosed upon or its foreclosure is imminent; and (2) authorized the General Manager to fix the fees to be paid brokers for the sale, rental and management of properties under the jurisdiction of the Property Management Division. See 5 Fed. Reg. 240.

/The General Manager and General Counsel of the HOLC promulgated a procedure, filed January 18, for the fixing of fees in accordance with the above authorization. See 5 Fed. Reg. 240-1./

The FHLBB, by orders filed January 18 (1) authorized the General Manager with the advice of the General Counsel to authorize and direct the division of mortgaged property and the indebtedness it

secures; (2) placed property called for foreclosure within the jurisdiction of the Property Management Division; and (3) authorized the General Manager to direct payments of water rents, sewerage disposal charges, etc., where required to assure their continuance and to compromise such present or future charges which are not in the process of litigation. See 5 Fed. Reg. 231.

Federal Savings & Loan Association: The FHLBB, by resolution filed January 12, amended the Code of Federal Regulations with regard to examinations of newly-organized FSLAs. See 5 Fed. Reg. 196.

Home Owners' Loan Corporation: The General Manager and General Counsel by regulations filed December 29, promulgated procedures (1) for the granting of extensions; (2) for the granting of amortizations; (3) for the fixing of interest rates and insurance requirements in connection with (1) and (2) above; (4) for the handling of the Tax and Insurance Account of any home owner; (5) for reamortizations and extensions in cases where miscellaneous credits have materially reduced the unmatured principal. See 5 Fed. Reg. 2-7.

The General Manager and General Counsel, by regulations filed January 18, (1) prescribed that a new note or bond or new mortgage be taken in cases where full release of the security is involved or in cases where Regional Manager and Regional Counsel deem it advisable to take a new mortgage; (2) proscribed the conditions for the carrying of Workmen's Compensation Insurance by a contractor; (3) amended the Code of Federal Regulations with regard to insurance regulations on mortgaged property, (4) and on property called for foreclosure; (5) authorized Regional Managers with the advice of the Regional Counsel the compromise charges for property services in cases where the claims are not in litigation; (6) authorized Regional Managers and certain other officers to make collections from present or former tenants and to accept deposits from prospective tenants and purchasers; (7) authorized the Regional Manager and certain other officers to execute contracts for water, gas, electricity, etc., in behalf of the Corporation where such services are necessary and desirable in the management of property under the jurisdiction of the Property Management Division and where it is the established local custom that such services be furnished at the expense of the landlord; (8) promulgated a procedure for the handling of withdrawn foreclosures; (9) amended the Code of Federal Regulations with regard to insurance losses of \$100 or less; (10) prescribed regulations for the recording of instruments by the fee attorney; (11) proscribed the terms for consenting to state moratoria; (12) issued regulations for the acceptance of bonds as repayments; (13) authorized the Regional Manager and other designated officers to effect month-to-month rental agreements..

and, in connection with the property owned by the Corporation, a year's lease providing it vests in the Corporation the privilege to cancel on one month's notice; (14) issued instructions for the transmittal of discharged notes or mortgages to the borrower's settlement agent; and (15) prescribed the conditions for the execution of options to purchase Corporation property. See 5 Fed. Reg. 228-234.

RURAL ELECTRIFICATION ADMINISTRATION: The Administrator, by notice filed January 5, allocated funds for certain projects in Florida, Indiana, Louisiana, Maryland and Mississippi. See 5 Fed. Reg. 69.

The Administrator, by orders filed January 12, allocated funds for certain projects in Nebraska, New York, Virginia, Arkansas and Georgia. See 5 Fed. Reg. 189.

The Administrator, by order filed January 6, allocated funds for a designated project in South Carolina. See 5 Fed. Reg. 128.

The Administrator, by order filed January 18, allocated funds for certain designated projects in Florida, Iowa and South Carolina. See 5 Fed. Reg. 234.

The Administrator, by order filed January 22, allocated funds to certain designated projects in Alabama, Colorado, Indiana, Mississippi, Missouri, Pennsylvania and Utah. See 5 Fed. Reg. 288.

The Administrator, by order filed January 22, allocated funds to certain designated projects in California, Indiana, Minnesota, New Mexico, Oregon and South Carolina. See 5 Fed. Reg. 298.

UNITED STATES HOUSING AUTHORITY: The Administrator, by regulations filed January 3, discussed methods of obtaining utility services for a project on the most favorable basis and discussed the factors involved in making an analysis of utility needs. See 5 Fed. Reg. 47-9.

TAXATION - INCOME

(I.T. 3341, Jan. 1, 1940. 8 U.S. Law Week 67.)

Employees of FLBs are exempt from tax.

Employees of Federal land banks are employees of agencies or instrumentalities of the United States within the meaning of Sections 207 and 208 of the Public Salary Tax Act of 1939 (Public No. 32, 76th Congress,

First Session), and therefore salaries received by them prior to Jan. 1, 1939, are exempt from tax imposed by a state, territory, possession or local taxing authority.

The FLBs are corporate agencies or instrumentalities of the United States, and salaries of employees are exempt from tax under Section 207(b) of the Public Salary Tax Act of 1939, since the power to appoint or select a majority of the board of directors is exercisable on behalf of the United States.

"Under the provisions of Section 5(a) of the Farm Credit Act of 1937 (50 Stat. 703), the 12 districts theretofore designated federal land bank districts were designated farm credit districts. Section 5(b) of that Act provides for 12 farm credit boards to function respectively in the 12 farm credit districts. Each board is composed of seven members. Three of the members are known as elected directors, no one of whom is designated by or on behalf of the United States. Three of the remaining four members are known as district directors and the fourth member is known as director at large. Two of the district directors and the director at large are appointed by the Governor of the Farm Credit Administration, an official of the United States Government. The third district director is chosen in accordance with the provisions of Section 5(d). That section provides that each third district director shall be selected from the three persons having the greatest number of votes of national farm loan associations and borrowers through agencies in the district.

"The Governor of the Farm Credit Administration, however, has the power of appointing from this selected group. He, therefore, appoints a majority of the members of each board. Section 7(b) of that Act provides that the members of the farm credit board of each farm credit district provided for in Section 5(a) shall be ex officio the directors of the federal land bank located in that district. The federal land bank located in each farm credit district has seven directors who are identical with the members of the farm credit board of the district in which the bank is located. Since the Governor of the Farm Credit Administration appoints a majority of the members of the farm credit board of each farm credit district, he appoints a majority of the directors of the federal land bank of each district."

TAXATION - INCOME

(Park Chamberlain, 41 B.T.A.--No. 3, Docket No. 88067, Jan. 5, 1940, 8 L.W. 104.)

Loss on surrender of mortgaged property by deed to coadventurer held deductible as ordinary loss.

In 1920 petitioner and others purchased a farm for cash and executed a purchase money mortgage, contemplating a resale at a profit. In 1934, when foreclosure was imminent, and after an unsuccessful attempt had been made to deed the property to the mortgagee in consideration for a release of liability under the mortgage, petitioner, being of the opinion that the property was not worth the amount of the mortgage indebtedness, surrendered his interest by quitclaim deed to one of his coadventurers. Held, there was no sale or exchange of a capital asset, and the loss sustained is deductible as an ordinary loss under the provision of Section 23(e) of the Revenue Act of 1934.

LEGISLATION

FederalCENSUS:

H. R. 8122 - Mr. Reed

Jan. 24, 1940, to Comm. on Census.
Provides for repeal of the National
Census of Housing Act, which was

approved Aug. 11, 1939.

FARM CREDIT ADMINISTRATION:

H. R. 8132 - Mr. Hope

Jan. 29, 1940, to Comm. on Agriculture.

Would extend for two additional years
the $3\frac{1}{2}$ per cent interest rate on Federal Land Bank Loans and
would provide a 4 per cent interest rate on Land Bank Com-
missioner's loans until July 1, 1942.

INTERIOR:

H. R. 8157 - Mr. Peterson

Jan. 25, 1940, to Comm. on Public
Lands.

The Secretary of the Interior, through
the General Land Office, would be authorized to purchase ob-
ligations secured by the liens on farm lands, paying not more
than the normal value of the lands plus the useful value of
buildings and improvements and not more in any event than the
amount of the indebtedness under the lien at the date of the
purchase. Upon application of the mortgagor, the Secretary
would then release him from his liability and cancel the bal-
ance of the indebtedness in consideration of a conveyance of
the land to the United States. The Secretary would also be
authorized to purchase fee simple title to farm lands held by
a mortgagee or lien holder under a foreclosure concluded after
Jan. 1, 1920 and prior to the date of this Act. All these
lands would then become a part of the public domain to be clas-
sified according to their adaptability for farming purposes.

Lands classified as not suited to farming would be withheld from settlement. Other lands would be divided into homesteads of a size suited for the support of a family, consideration being given to the fertility of the soil and the general farm conditions in the section where the lands are located. These homesteads would not be less than fifty acres nor more than one hundred and sixty. The cost of acquisition would be allocated to each homestead and applicants to whom the homestead privilege is granted, would pay this amount to the Secretary in not more than forty annual installments with interest at a rate not to exceed that at which the Federal Government may borrow money at the time. Homesteaders would, so long as any portion of the purchase price remains unpaid, be prohibited from selling or encumbering the tracts in any way. In choosing settlers, preference would be given to farm families and to mortgagors living on encumbered lands at the time of liquidation of indebtedness as provided in the bill.

State

BANKING

New York: A. 722

Introduced by Mr. Devany, Jan. 24, 1940.

Provides for the incorporation of mortgage banks. In addition to the powers conferred by the general stock corporation laws, these banks would be authorized to lend money on the security of first mortgages on real property, including property insured by the Federal Housing Administration and to issue, sell and redeem debentures. Detailed rules and regulations are set forth in the bill with respect to organization procedure, election and duties of officers, meetings of stockholders, issuance of debentures, making of appraisals and the preparation of required reports to State authorities.

A. 775

Introduced by Mr. Devany, Jan. 24, 1940.

Would authorize the incorporation of mortgage indemnity companies. These companies would be allowed to execute mortgage indemnity and mortgage enforcement contracts, to service mortgages on real property, to borrow money and to carry on other related activities.

DEFICIENCY JUDGMENTS

New York: A. 9, 343 and 780

Introduced by Messrs. Crews, Marasco, and Devany, respectively. See also S. 55.

The first and last of the above numbered bills propose to extend the provisions of the 1933 law (Ch. 794) relative to deficiency judgments in action to foreclose mortgages from July 1, 1940 to July 1, 1941. A. 343 would prolong the extension until July 1, 1942.

HOUSING

New York: A. 151

Introduced by Mr. Hill, Jan. 9, 1940, to Comm. on General Laws.

Public housing. Would amend the public housing law (Ch. 808, Laws 1939) so as to authorize the construction in certain instances of adequate housing facilities for employees of a municipal housing authority or of a municipality. The usual requirement applying to State housing projects that occupancy be restricted to persons of low income would not apply to this type of housing.

A. 242

Introduced by Mr. Wachtel, Jan. 10, 1940, to Comm. on Banks.

As a means of encouraging the development of both public and private housing facilities, savings banks will be permitted, until December 1, 1943, to purchase land in any city having at least 300,000 inhabitants, and to erect on the land so acquired, apartments, tenements, or other dwelling houses, not including hotels but including accommodations for retail stores, shops, offices and other community services.

A. 412

Introduced by Mr. Boccia, Jan. 16, 1940. Proposes the amendment of the Multiple Dwelling Law as it relates to the re-

covery of rent and the maintenance of actions on premises occupied as dwellings, so as to extend the period of occupancy from Dec. 31, 1939 to Dec. 31, 1941.

A. 728

Introduced by Mr. Goldberg, Jan. 23, 1940. Proposes the addition of a new section to the Civil Practice Act, designed to

protect occupants of low rent dwelling units from the exaction of oppressive rental agreements arising out of the constantly growing shortage of available dwellings.

HOUSING (contd.)

New York: (contd.)

S. 22

Proposes the amendment to the Multiple Dwelling Law as it relates to occupancy of cellars and basements for living purposes, by imposing more strict regulations on the issuing of permits for the occupancy of such cellars and basements.

S. 572

Introduced by Mr. Pack, Jan. 22, 1940.

Would amend the Multiple Dwelling Law so as to require that courts and shafts of multiple dwellings, unless built of a light color brick or stone, be thoroughly whitewashed or painted a light color by the owner. If painted, repainting would be required at least every three years, and a thorough washing would be required annually. It would be required that whitewash be renewed every two years. Immediately after each painting or whitewashing the owner would report to the department charged with the administration of the law.

S. 573

Introduced by Mr. Pack, Jan. 22, 1940.

Would amend the Multiple Dwelling Law, so as to strengthen the requirements relative to artificial hall and stairway lighting.

MORTGAGES

New Jersey: A. 49

Introduced by Mr. Cavicchia, Jan. 15, 1940.

Executors, administrators, guardians or trustees, having the duty of loaning money, are authorized to invest it in bonds secured by mortgages on real estate which has been acquired by the owner, or prior owners, through a certificate of tax sale foreclosure. The property must be worth at least twice the amount loaned and the interest charged may range from 3 per cent to 6 per cent.

New York: A. 8, 344 and 421

Introduced by Messrs. Crews, Morasco and Mailler, respectively. See also 433.

The Assembly Bills 8 and 421 would extend the terms of the 1933 Mortgage Moratorium law (Ch. 793) from July 1, 1940 to July 1, 1941. Assembly Bill 344 proposes that the emergency period

MORTGAGES (contd.)

New York: (contd.)

A. 8, 344 and 421

be continued until July 1, 1942.

A. 415.

Introduced by Mr. Downey, Jan. 16, 1940.

Would limit the rate of interest on indebtedness secured by a mortgage on real property, hereafter executed, to 4 per cent per annum. (A. 403, introduced by Mr. Schwartz, would set the maximum rate at $4\frac{1}{2}$ per cent.)

A. 416

Introduced by Mr. Downey, Jan. 16, 1940. See also S. 704.

The mortgagee who forecloses a loan secured by real property, would be limited in his recovery either to the mortgaged property or to the proceeds from its sale.

A. 420

Introduced by Mr. Maillor, Jan. 16, 1940. See also S. 434.

Would permit any person having the right to foreclose a mortgage to apply to the court and upon eight days' notice, to request that the last record owner of the mortgaged property refinance the loan in whole or in part. Should the court find that the mortgage held by the applicant could be replaced or refinanced at a total cost of not more than $2\frac{1}{2}$ per cent of the principle, with annual interest thereon of not more than 5 per cent, and that in the event the mortgagor was required to pay installments on the principle, the total payment of principle and interest would not exceed 7 per cent for any year, then the court would be authorized to issue an order directing that the mortgage be **replaced** or refinanced.

S. 705

Introduced by Mr. Farrell, Jan. 24, 1940.

Would permit the owner of a bond or other obligation secured solely by a mortgage, hereafter executed upon real estate to choose between a right of action at law upon the bond or the right to foreclose the mortgage, but both remedies would not be granted in a single action and the commencement of one would constitute an irrevocable waiver of any right under the other.

TAXATION

New Jersey: A. 37

Introduced by Mr. Platts, Jan. 15, 1940.

Governing bodies of municipalities would be allowed by resolution, to provide for the payment of delinquent taxes due as of Jan. 1, 1940, in installments spread over a period of not to exceed five years. Monthly or quarterly payments would be permitted and the first installment would become due on Aug. 1, 1940. Interest would be charged on the unpaid balances at the rate fixed by the governing body but in no case exceeding 8 per cent.

S. 8

Introduced by Mr. Bowers, Jan. 15, 1940.

The penalty charged on delinquent, municipal taxes would be changed from a straight 8 per cent per annum to a 4 per cent rate for the first year of non-payment and a 6 per cent rate for the second and subsequent years.

New York: A. 265

Introduced by Mr. Parsons, Jan. 15, 1940. See also S. 270.

Would give the Board of Supervisors of any county, discretionary authority to provide for the payment of State and county taxes in two equal installments during the months of January and July.

A. 336

Introduced by Mr. Crews, Jan. 16, 1940. See also S. 322.

Provides for the creation in the Dept. of Taxation and Finance, of a State Board of Assessment Review. The Board would consist of nine gubernatorial appointees and would have jurisdiction over the review and revision of real property assessments made for the purpose of taxation. Review would be instigated by filing a petition setting forth that an assessment is erroneous by reason of over-valuation, or inequitable valuation when compared to surrounding property. (A somewhat similar proposal was introduced as A. 510 by Mr. Mitchell and as S. 308 by Mr. Crawford.)

TENANCY

New York: A. 96

Introduced by Mr. Bennett, Jan. 8, 1940.

The effect of a tenant holding

TENANCY

New York: (contd.)

A. 96

over after the expiration of his tenancy if with the consent of the landlord, would be to give him the status of a tenant from month to month and if without the consent of the landlord, the latter would be able to choose between an ejectment and the holding of the tenant on the basis of a month to month tenancy.

A. 123

Introduced by Mr. Lawrence, Jan. 8, 1940. See also S. 8.

Proposes to amend the real property law so that agreements for the use and occupation of property in which no expiration date is specified, will be deemed to create a tenancy from month to month. The present law provides that such an agreement will be deemed to continue in force until the first day of October following the date upon which possession was taken.

LEGAL COMMENT

FACTS THE HOUSING CENSUS WILL SHOW. Reprinted from Insured Mortgage Portfolio. Vol. 4-No. 7. January 1940.

A general discussion of the projected nationwide census of housing and its significance to the mortgage lending field was carried in September Vol. 4-No. 3.7. With the recent completion by the Bureau of the Census of the schedule of questions which will be used if the appropriation for the census is provided, it is now possible to present a more detailed statement concerning the housing market data the Bureau intends its 120,000 census enumerators to collect next April.

Study of the subjoined questions, which will comprise the schedule for the housing census, shows the wide extent of basic information concerning the housing market which will be gathered. For the first time in the history of the United States, a complete count of the National estimated 35,000,000 dwellings is projected, together with an analysis of the characteristics of those dwellings by type, size, price range, age, condition, occupancy or vacancy, facilities, and equipment.

Mortgage Data to be Collected:

In addition, and of especial interest to mortgage lenders, the data will show facts as to home tenure (whether owned or rented) and, in connection with nonfarm owner-occupied dwellings, such mortgage characteristics as mortgage indebtedness, frequency and amount of mortgage payments, mortgage interest rates, and type of mortgage.

Certain additional data obtained from the Bureau's regular population schedule will be correlated with data obtained from this housing schedule. These additional items will include family income from wages and salary, number of roomers or lodgers, family composition, and related items.

It is anticipated that a portion of these housing market data will be compiled by minor areas within each city, so that they may be put to practical use by local mortgage lending institutions in determining market characteristics and estimating the mortgage situation in their own lending territories.

The more extensive summaries which will be presented on city-wide bases will serve to indicate the quality of housing available at various rental levels within those territories, while figures on vacancies in dwellings of various rental ranges, types, sizes, and equipment characteristics will give indication of the need and demand for additional housing.

Authoritative market data of this description have not heretofore been available on a national basis.

Similarly, the housing census should produce mortgage data which will serve to indicate for any city or area the relative burden of mortgage payments to home owners in various economic levels and the relationship between mortgage debt and the value of the properties.

These data concerning the characteristics of outstanding home mortgages should assist individual mortgage lenders in determining their relative competitive position in the local mortgage market.

Study of these figures on a state and national basis also will be useful in determining the market for housing and the need for residential mortgage funds in various sections of the country.

Housing Census Widely Endorsed:

It may be said in conclusion that this housing census has the endorsement of numerous trade associations and research agencies in the construction industry and of government agencies concerned with housing.

MORTGAGE ASPECTS OF THE HOUSING CENSUS. Reprinted from
Federal Home Loan Bank Review, Vol. 6-No. 4. January 1940.

The Nation's first census of housing is scheduled to begin in April of this year. Authorized by Congress in the closing days of the last regular session, it is the most important new subject to be covered by the Bureau of the Census during its work for the Sixteenth Decennial Census.

The home-financing data collected from all owner-occupied non-farm homes contacted during the census will represent the most complete summary of this type of information ever obtained in this country. The questions on this part of the housing study are included in the last seven items of the schedule. They include inquiries as to the value of each property and the amount of outstanding indebtedness on the first and second mortgages. The arrangements for liquidating these mortgages

will be studied through queries on the frequency and amount of regular payments and provisions for the reduction of principal and for the accumulation of funds to pay real estate taxes.

These facts will measure the prevalence of monthly payment loans, of mortgages requiring principal reduction, and of agreements with financial institutions whereby future taxes are anticipated through regular monthly payments. Tabulations will be made by size of loan, type of mortgage holder, and geographic area. Some light on the relative burden of home ownership will be provided by comparisons of the amount of mortgage payment with the value of the property, with the estimated rental, and with the wage or salary income of the home owner.

Answers which are obtained from the question on interest rates will, of course, have to be interpreted in the light of other charges levied against the home owners by the various types of mortgage lenders. Nevertheless, these figures will serve as a partial guide in interpreting existing data on the cost of financing home ownership.

The relative importance of the various types of mortgage holders in the home-financing field will be indicated by summaries of the amount of outstanding indebtedness on first mortgages held by each class of mortgagee. This information, together with data on payment plans and interest rates, will provide the basis for a comparison of variations in the lending practices of different mortgagees. An analysis of these data for cities and other local areas should be of assistance to home-financing institutions in evaluating their competitive position in the local mortgage market.

In addition to the data relating particularly to home finance, the housing schedule will include an extended list of questions on the characteristics of all residential structures and dwelling units, as well as the conveniences and equipment available in these units. The compilation of these data for the different census subdivisions in each city will help mortgage lenders to determine the mortgage stability in the various sections of the communities which they serve.

By correlating data on the age, physical condition, and equipment of dwellings in a community, or in specific neighborhoods, it will be possible to obtain complete information on existing housing conditions. This knowledge will also provide clues to the location of opportunities for lending for reconditioning and modernization.

Included in the census will be the first Nation-wide summary of residential vacancies. These vacancy data will be analyzed according to estimated rental value of the dwelling unit and other characteristics.

An indication of the influence of price in the demand for housing will be given by summaries which present the characteristics of the unoccupied houses available at various rental levels.

Numerous trade associations and research agencies in the real estate, home-financing, and construction industries, together with the government agencies interested in housing, have emphasized the value of this type of census and have urged its initiation.

CENSUS OF HOUSING, 1940 -- PRELIMINARY LIST OF INQUIRIES.

Characteristics of structure in which dwelling unit is located

- A. Type of structure: 1-family detached, 1-family attached, 2-family side-by-side, other 2-family, 3-or-more family structures and structures with business by number of dwelling units
- B. Structure originally built as: Residential structure with same number of dwelling units, with different number of dwelling units; nonresidential structure
- C. Exterior material: Wood, brick, stucco, other
- D. Is this structure in need of major repairs? Yes or No
- E. Year structure was originally built
- F. Located on a farm? Yes or no

Characteristics of dwelling unit

- G. Number of rooms
- H. Water supply: In dwelling unit--running water, hand pump; within 50 feet of dwelling unit--running water, other
- I. Toilet facilities: In structure--flush toilet for exclusive use, shared flush toilet, other; outside toilet or privy
- J. Bathtub or shower with running water in structure: For exclusive use; shared with other households
- K. Lighting equipment: Electric, gas, kerosene or gasoline, other
- L. Estimated rental value of owner-occupied or vacant nonfarm dwelling
- M. Occupancy status of vacant dwelling; for sale or rent--ordinary dwelling, seasonal dwelling; held for absent household--ordinary dwelling, seasonal dwelling

Characteristics of occupied dwelling unit

- N. Home tenure: Owned, rented
- O. Color or race of head of household
- P. Total number of persons in household
- Q. Refrigeration equipment: Mechanical, ice, other
- R. Is there a radio in this dwelling? Yes or No
- S. Heating equipment: Central steam or hot water, piped warm air, pipe-

- less warm air, heating stove
- T. Fuel for heating: Gas, coal or coke, wood, fuel oil, kerosene or gasoline, other
 - U. Fuel for cooking: Electricity, gas, coal or coke, wood, kerosene or gasoline, other
 - V. Monthly rental of renter-occupied dwelling
 - W. Rental value without furniture of renter-occupied nonfarm dwelling with use of furniture included in rent
 - X. Cost of utilities and fuel paid for by nonfarm renter in addition to monthly rental
 - Y. Value of owner-occupied home
 - Z. If owner-occupied nonfarm, is property mortgaged? Yes or no

Mortgage characteristics of owner-occupied nonfarm 1- to 4-family structure

- Aa. Present amount of outstanding indebtedness on first mortgage or land contract; on junior liens
- Bb. Frequency and amount of regular payments on first mortgage or land contract
- Cc. Do these regular payments include principal reduction? Yes or No. Real estate taxes? Yes or No
- Dd. Interest rate on first mortgage or land contract
- Ee. Type of holder of first mortgage or land contract: Building and loan association, commercial bank, savings bank, life insurance company, mortgage company, HOLC, individual, other

THE LAW OF PUBLIC HOUSING. William Ebenstein, Member, National Association of Housing Officials, 23 Minn. Law Review, June 1939. Reported in CCH Legal Periodical Digest, 1939, p. 3567. (Reprinted by permission of Commerce Clearing House, Inc.)

The lower income groups of the American people not only live in inadequate housing conditions to a very appreciable degree, but they also pay an excessive amount of their income toward rent. The inability of private industry to meet the nation's housing needs cannot be emphasized too strongly.

The costs of under-housing are manifold. Studies undertaken in various countries, including the United States, have clearly brought out the correlation between bad housing and crime. Bad housing as a direct cause of increased morbidity and morality has long been established as an unchallengeable fact. The financial liabilities of the substandard housing areas to the community supply another argument for the attack on defective and dangerous housing conditions. In a study taken in

Indianapolis, it was found that thirty per cent of the city hospital service, twenty-six per cent of taxes spent for police, fire, health, sanitary services, more than thirty-three per cent of the public relief, and thirty-six per cent of the city expenditures for arrests, trials and imprisonments went into the substandard areas containing only ten per cent of the population. Similar data were found in the other cities where investigations of the same type were undertaken.

The depth of the depression had to be reached for large-scale government building of homes to come into its own. The Housing Division of the PWA, established under the NIRA Act in 1933, started out with a policy of lending primarily financial assistance to new housing constructions. The Division was undertaken by the USHA in November 1937, its record having been much criticized on the grounds of excessive costs, excessive centralization, indifference to the wishes of local authorities, and unfair and ruinous competition with private enterprise. An important feature in the four years' life history of the Housing Division was its standardizing influence on the housing legislation of the states. Today, thirty states, the District of Columbia, Hawaii, and Puerto Rico have housing authority laws. Subsequently enacted in eight more states. Ed. B. All these states except one have granted the right of eminent domain to housing authorities, but a number of states do not exempt the property of the housing authorities from taxation.

Federal participation in housing has found a comprehensive organization in the United States Housing Act of 1937, popularly known as the Wagner-Stegall Act. The main objective of the Housing Authority is to give financial aid to state and local housing authorities to provide decent, sanitary and safe dwellings for families of low income. Only those families are eligible whose income is less than five times the rental, including the cost of heat, light, water and cooking fuel. The United States Housing Authority will undertake only financial transactions of the type described, and will not engage in any demonstration projects or make loans to limited-dividend or cooperative housing associations, as did the Housing Division of the Public Works Administration. The Authority no longer engages in the construction of dwellings itself, and the projects which it took over from the Housing Division are gradually turned over to local housing agencies. Section 12(b) of the Act requiring the Authority to divest itself of these federal projects "as soon as practicable." This is another step to insure that the Authority shall be a financing agency and shall leave the responsibility for operating slum-clearance and low-rent projects to local agencies. The importance of the United States Housing Act of 1937 lies in the fact that it has made federal and state participation in solving the housing problem a permanent governmental activity.

The first and only leading case in which the question of low-rent housing and slum-clearance as federal public uses was the central issue, was *United States v. Certain Lands in the City of Louisville*, 78F. (2d) 684, where the issue before the court was whether the Federal Government had the power to exercise eminent domain for purposes of slum-clearance and low-cost housing. The Circuit Court of Appeals pointed out that most of the cases cited in support of housing as a public use were instituted under state statutes, and therefore did not apply to the Federal Government. What might be a public use under one sovereign might not be a public use under another. In the exercise of its police power, a state may do things which benefit the health, morals and welfare of its people. The Federal Government, however, has no such power within the states. The court thus did not deny the character of slum-clearance, and low-cost housing as a public use in all instances, but introduced the significant distinction between the constitutional implications of federal and state housing. The court did not deny that the housing scheme would increase employment and benefit many residents of the community. However, the vision of slum-clearance as a direct step to state Communism played a decisive part in shaping the attitude of the Circuit Court of Appeals, just as it had in the trial court, and it was held that the Federal Government could not constitutionally exercise the power of eminent domain for a low-cost housing and slum-clearance project. The United States appealed from the decision, but subsequently moved to dismiss the case, and the motion was granted.

Oklahoma City v. Sanders, 94 F. (2d) 323, is the most recent case involving the issue whether slum-clearance and low-cost housing are federal public uses. The court answered the question in the affirmative, refusing to adopt the ruling of the Louisville case.

Under the United States Housing Act of 1937, federal housing activities are now restricted to financial operations, so that the main legal issue that may still be determined in court is the constitutionality of employing the spending power of Congress for housing. Under *Massachusetts v. Mellon*, 262 U. S. 447, neither a state nor an individual is recognized to have a sufficient interest to contest the spending power of Congress. The first major inroad in to this doctrine was *United States v. Butler*, 297 U. S. 1, which admitted an exception from the general doctrine of *Massachusetts v. Mellon* in those cases, where a specific excise or tax is challenged, the proceeds of which would be used for an illegal purpose. Since the Federal Government, under the United States Housing Act of 1937, levies no specific taxes or excise to finance its housing program, only the spending power is involved, for which the rule of *Massachusetts v. Mellon* still stands.

That Congress may spend money in aid of the "general welfare" is no longer open to dispute. In the Butler case, however, in determining whether the Federal Government, under its spending power, could appropriate money for the farmers upon the condition that they restrict production, the Court did not go into the question of whether these appropriations were for the general welfare, and thus the exercise of an independent, substantive power. The Social Security Act cases, 301 U. S. 619, brought some clarification on the points which the Butler case had left obscure. In *Helvering v. Davis*, 301 U. S. 619, the Court recognized the difficulties of satisfactorily defining the extent of the spending powers, and said: "The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be placed through a formula in advance of the event. . . . The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong. . . ."

It is submitted that the United States Housing Act of 1937 would be held constitutional even within the limitations of the Butler case, and certainly if the rulings of the Social Security Act case should be adopted. In *Alabama Power Co. v. Ickes*, 302 U. S. 464, and *Duke Power Co. v. Greenwood County*, 302 U. S. 485, the Supreme Court upheld the right of the Federal Government to lend funds and make grants to local agencies for the production and distribution of electricity. These federal loans and grants are very similar to the loans and grants made by the United States Housing Authority to local government agencies for slum-clearance and low-cost housing projects.

Public housing as a municipal activity of clearing slums and erecting planned low-rent projects is a novel issue in American law. The two main issues involved are the power of eminent domain and the power of taxation. The first test case to define the powers of a municipal housing authority was *New York City Housing Authority v. Muller*, 270 N. Y. 333, where the housing authority sought to acquire two old tenements which separated two large areas of the planned project, and the owners refused to sell at the prices offered to them. The New York Court of Appeals held that the condemnation did not constitute a taking of private property for private use in violation of the state constitution and of the Fourteenth Amendment to the Federal Constitution. By upholding the constitutionality of the Municipal Housing Authorities Law, the court established the following propositions: slum-clearance and low-cost housing are public purposes; the power of eminent domain may be employed for acquiring property for these purposes; public moneys may be used; the housing authority may own, operate and control the projects;

housing authorities serve the protection, safety and general welfare of the people; the bonds of housing authorities are legal obligations, and tax exemptions on projects and bonds were established. In *Spahn v. Stewart*, 268 Ky., 97, the court, closely following the *Muller* decision sustained the constitutionality of the Municipal Housing Commission Law of Kentucky.

The question of the necessity for the exercise of the power of eminent domain is addressed to the legislature, while the question of whether or not the use to which the proposed condemned property is to be put is one to be determined by the judiciary. Slum-clearance without the power of condemnation is an impossible task.

Since the passage of the United States Housing Authority Act, three important cases have all upheld the rulings of *New York City Housing Authority v. Muller*, *supra*, and *Spahn v. Stewart*, *supra*. In *Wells v. Housing Authority of the City of Wilmington*, 213 N.C. 744, *State ex. rel. Porteris v. Housing Authority of New Orleans*, 190 La. 710, and *Dorman v. Philadelphia Housing Authority*, 331 Pa. St. 209, the problems of eminent domain, expenditure of public moneys, tax exemption of property held by housing authorities, have been favorably decided.

The first efforts to combat slums took the form of state and municipal statutes and ordinances authorizing the demolition of faulty, dangerous or insanitary structures. The constitutionality of using the police power in this direction is now well established. Another procedure of regulating housing under the police power is the control of building lines and the protection of future street reservations. Zoning and planning have established themselves as two other methods under the police power of regulating public interests, which also vitally affect housing conditions.

What is the position with regard to the taxing power of the states? This question, just as that of the power of eminent domain, refers to the right of the states not only to eliminate evils and abuses by control and regulation, as under the police power, but by directly entering the housing field in the form of slum-clearance and low-cost housing. The constitutional issue is whether expenditures for public housing as a method of actual provision of housing facilities by local government agencies are expenditures for a public purpose within the meaning of the law. The leading case on this issue is *Green v. Frazier*, 253 U. S. 233, in which the Supreme Court sustained the right of the State of North Dakota to exercise the power of taxation for public housing. In *Veterans' Welfare Board v. Jordan*, 89 Cal. 124, in which *Green v. Frazier* was accepted as ruling precedent, the court distinguished between a single man scheme and a collective land settlement scheme, holding the former

unconstitutional. Public housing, to fall under the concept of public purpose within the meaning of the law, can only refer to collective groups whose housing problem affects the entire community and can be solved only on a collective basis. The quality of this aspect of the housing problem as a public purpose is not impaired by the fact that the individual tenants who are rehoused derive a benefit from this type of scheme. Some state courts, like those of New York, are willing to recognize slum-clearance and low-cost housing as public purposes, even when the projects are owned and operated by private companies, provided they maintain limited dividends and are subject to the control and supervision of the State Housing Board. The conclusion is legitimate that tax exemption disputes concerning municipal housing authorities will be decided favorably, since tax exemption for private, limited dividend corporations has been upheld. Massachusetts is the only state in which decisions hostile to public housing have been rendered, but the only Massachusetts case which resembles our contemporary housing problem is *In re Opinion of the Justices* (1912), 211 Mass. 624, in which the court declared unconstitutional a proposed bill to enable a state agency financed by the state to buy, rent and sell real estate for the purpose of providing homes for mechanics, laborers or other wage earners. [Superseded: see page 8; also 65 HLD 1. Ed.B.]

The police power and the power of taxation of the states in slum-clearance and low-cost housing are supported by a great number of decisions. The question of eminent domain in this connection is somewhat less settled. So far only a few cases, previously discussed, have dealt with the specific issue of the exercise of the power of eminent domain for slum-clearance and low-cost housing, and in all instances the power of the states was sustained. No unfavorable decision has been handed down so far, and it seems very unlikely that there will be any in the future. If public housing has been sustained as a public purpose in taxing and police power cases, it is reasonable to predict that the use of the power of eminent domain by the states will be admitted by the courts when housing projects cannot be achieved in any other way. As the law stands today, federal action for the general welfare seems to be limited to appropriations of money, although certain minimum standards for its use may be attached. This limitation of the power to provide for the general welfare does not exist in the case of the states; the state can use for the general welfare any of its sovereign powers, with the restriction under due process that the power employed must bear a reasonable relation to the evil to be remedied.

AMERICAN BAR ASSOCIATION. Proceedings of the Sixty-second Annual Meeting. San Francisco, California. July 10-14, 1939.

Matters of general interest to attorneys in the member agencies of the Central Housing Committee which appear in the Report of the Annual Proceedings of the American Bar Association follow:

The American Bar Association's bill S. 915, H. R. 4236, 76th Congress, on administrative law was reported favorably and amended (page 518) to authorize the Supreme Court of the United States to prescribe rules in practice and procedure for the hearing of all claims and controversies between the United States or its governmental agencies and any other person. The bill, as amended, appears on page 587 of the Annual Report.

The report of the section on Real Property Probate and Trust Law contains the following paragraph:

"UNIFORM MORTGAGE ACT. This committee has had a number of meetings and has been making a study of a draft prepared by the Sub-committee on Law and Legislation of the Central Housing Committee. It is the suggestion of this committee that it continue its work but in cooperation with the National Conference on Uniform State Laws."

The section on Real Property Probate and Trust Law is also carrying on studies on the following subjects: Standards for Title Opinions, Standards for Title Insurance, Federal Tax Liens, Improvement of Land Records. The report of this section appears on pages 472 to 476, inclusive, of the Annual Report.

In a table entitled "Uniform Acts Drafted and Adopted by the National Conference of Commissioners on Uniform State Laws and Approved by the American Bar Association" it appears that the Uniform Mechanic's Lien Act which was approved by the American Bar Association in 1932 has been enacted in only one jurisdiction.

The House of Delegates of the American Bar Association adopted the following resolution:

"Resolved, That the Association approves in principal an act permitting the United States to be sued in tort in respect of claims for property damage or personal injuries due to the negligence of Government officers and employees in the performance of their duties."

The Report of the Standing Committee on Jurisprudence and Law Reform contains some discussion of this resolution on page 211 of the Annual Report.

The same committee presented a draft of a bill to amend sections 81, 82 and 83 of Chapter 9 of the Bankruptcy Act to permit the adjustment of special assessment bonds or securities of any kind which are secured by special assessment or special taxes. The draft was approved by the House of Delegates and the Committee was authorized to urge its adoption by the Congress.

The Committee on Resolutions offered a resolution which was summarized by the Committee as follows:

" . . . many positions in governmental service now occupied by laymen might, in the public interest, be better filled by lawyers. It /the resolution/ calls for the appointment of a committee to make such positions available to lawyers to the end, among other things, of reducing economic hardships among lawyers."

The association recommended that a special committee on the Economic Condition of the Bar be requested to study this subject and a motion to that effect was adopted.

LEAGUE OF NATIONS EUROPEAN CONFERENCE ON RURAL LIFE,
1939. Report on Rural Housing and Planning by the
Health Committee.

In 1939 the European Conference on Rural Life was held at Geneva. Prominence was given to a study of improvements in the planning of rural houses, the planning of dwellings grouped together into villages, and the planning of the areas in which such houses or villages are built. The countries included in this study were: Belgium, France, Latvia, Netherlands, Poland, Sweden, Czecho-Slovakia and Yugoslavia.

The study disclosed the fact that administrative organizations have been set up in the different countries to deal with the improvement of rural houses and their outbuildings. In consequence of their economic, social and political circumstances, different countries necessarily followed different internal policies to achieve their purpose. Special stress has been laid on collaboration between Government Departments and private cultural or occupational bodies. The latter find it easier to penetrate the rural environment from which they come and whose confidence they possess.

The general measures taken to improve rural housing are more or less developed according to their nature. They consist as a rule of advice (plans, estimates, specifications, instructions for the execution of work) non-recoverable grants whether in money or material, long-term, sometimes even very long-term, loans at low rates of interest or even free of interest, with a bonus in the form of the remission of a certain proportion of the debt when the work is properly executed.

In connection with advice given in the form of standard plans or models, some countries point out that if these are given to peasants and handed over by them to craftsmen or small building contractors, it is difficult to carry them out. Accordingly, when such plans are prepared, they are intended not to be given direct to the parties themselves, but to be passed to the technical services who advise those parties on the spot in the light of each peasant's special circumstances, or to supply them with plans adapted to those circumstances. In different countries, these technical experts may be central or provincial government officials or private architects and engineers, whose schemes will, before being put into effect, be referred to the departments which have to decide about the loans or grants.

The problem of housing the agricultural worker is somewhat complex; its solution lies, not only in getting rid of overcrowding, but also in fitting up the house so as to make it healthy and comfortable (water, heating, lighting, etc.).

During the past twenty years in most countries, and nearly fifty years in some, legislation has been introduced to promote the building of cheap houses or the purchase of small holdings with a cottage attached. As in the case of housing regulations, the chief object of such legislation is to supply urban dwellings, cheap, healthy and as comfortable as possible for the working class and persons of modest income who live chiefly on their earnings.

Such houses are built by private companies, or provincial or communal administrations, and are either rented to the occupiers or sold to them, the price being paid off in comparatively small annual installments.

Extended research on housing is being conducted in the various countries to find types of buildings suitable both from the health and from the practical farming standpoint and economical cost. New materials, the way to use them, and standardized materials and parts ready to be assembled on the spot, are also studied. Research work of this kind is going on continually and, as a result, standard appliances, for ventilation and economical heating, for instance, are being introduced. Economical heating has been specially

studied in such countries as Poland. It is a useful way of preventing the overcrowding caused by the tenants' occupying the same room day and night during the winter.

In regard to sanitary laws and regulations on housing, all countries now have their housing laws and by-laws. These lay down the health conditions which must be observed in houses, and aim at the abolition of slums. Some of these laws and regulations contain only a few clauses applicable to the rural house or its outbuildings and to the sanitary arrangements, but the more recent housing regulations are taking into consideration the characteristic features of the countryside.

In planning rural communities, the object is to provide their inhabitants with such common services as they cannot, or cannot adequately provide for themselves on farms. These services consist of administrative buildings, places of worship, health buildings and premises, communal centers where all kinds of sporting, cultural and artistic societies and associations hold their meetings, sports grounds, promenades and public gardens for the leisure and recreation of the inhabitants, and public and communal services such as fair-grounds, covered markets, etc.

In regard to the systems for public supply and distribution of drinking-water, the thickly populated countries or districts are well developed or in course of rapid development. As the amount of water required is generally considerable, extensive or deep reservoirs have to be built in places suitable by their natural configuration.

In rural areas with widely scattered farms or very small centers of population, on the other hand, the amount of water required is relatively limited; hence adjacent local supplies generally prove sufficient.

The question arose as to whether water-supply systems are to be undertaken on a district basis or on a small group of villages. The advantages of a large-scale system are obvious from the standpoint of the efficiency and effective supervision of the undertakings and installations; this type of system has been largely employed in Belgium and the Netherlands, where the density of the population is high and rural communities are close to one another. But it appears to be much less advantageous in countries with a scattered population and small, widely separated communities--except where there are no local supplies of drinking-water, as in the Carso province of Yugoslavia. In France, where districts vary greatly as regards density of rural population and distance between villages, both regional and local systems are applied, according to the particular circumstances.

The stage of rural electrification reached in different countries varies greatly. It is well advanced in Belgium, France, Netherlands and Sweden, subject to the reservation that, even where the center of the group has been electrified, outlying areas are not always linked to the system; the obstacles to complete electrification, in such cases, diminish as the density of the population increases and the distance separating outlying areas from the center of the group, or the main power-line, dwindles.

In other countries, electrification has proceeded more slowly on account of the distance between farms and the scattered character and small numbers of the population of rural communities. The construction of central power-stations, recently completed or now in progress, to supply towns and industrial centers, will allow country areas to be supplied in the future in varying proportions.

The need for propaganda for the improvement of health and social standards among rural populations has been considered. This propaganda has taken many and varied forms in the several countries; its object is to reach agriculturists on the spot, and to make them understand or appreciate more fully the advantages offered by these fundamental improvements in the conditions of rural existence.

SELECTED REFERENCES

(The following list of current references, while by no means exhaustive, indicates the availability of material concerning legal problems regarding housing and related documents.)

BANKRUPTCY (Also see Reorganization)

Assignment of Accounts Receivable as affected by the Chandler Act by Ralph R. Neuhoﬀ, 34 Illinois Law Review 538-548. (January, 1940).

CONSTITUTIONAL LAW

Current Constitutional Fashions by E. F. Albertsworth, 34 Illinois Law Review 519-537. (January, 1940).

CONTRACTS

-Strike Clause Held to Impose no Obligation on Seller to Remedy Prior Strike - Clause Deficiencies, note on Dant & Russell, Inc. v. Grays Harbor Exportation Co. 106F. (2d) 911 (C.C.A. 9th 1939) in 53 Harv.L.R. 489-90. (January, 1940).

-The Doctrine of the Proper Law of the Contract in the English Conflict of Laws by M. Schmitthoff, 28 Georgetown Law Journal 447-463. (January, 1940).

HOUSING

-Connecticut

An Act Establishing the Connecticut Development Commission. Laws, Statutes, Etc. Connecticut (1939). 6p.

-Foreign

Soviet Housing Law by John N. Hazard, 1939. New Haven: Yale University Press; London: Humphrey Milford, Oxford University Press (Pp vi, 178) reviewed by Arthur M. Brown in 26 A. B. A. Journal 188. (February, 1940).

HOUSING (contd.)-Foreign (contd.)

-Housing Laws of the Netherlands... the original housing law with amendments and supplemental provisions...New York City Housing Authority, 1939. U. S. Federal Works Agency. Work Projects Administration for the City of New York. Division of Foreign Housing Studies. 138p. mimeo., 30cm. (Legislative series II, issue No. 1).

-General

An Index of Major Issues in State Decisions on Housing Authorities Laws. Report of the Legal Committee of the National Association of Housing Officials. The Association, 1313 E. 60th St., Chicago. November, 1939. Pub. No. N111. Chart, 13 pp. 25¢.

Rent Control in War and Peace; a study prepared under the auspices of the Laws and Administration Committee of the Citizens' Housing Council of New York. Edith Berger Drellich and Andree Emery. N.Y., National Municipal League, 1939. 124p., tables, charts, 25cm.

LAND

Summary of Outstanding Laws Affecting Rural Land Use Enacted during 1939. Compiled by Kenneth Wernimont. Land Economics Div., Bur. of Agri. Economics, Dept. of Agri. Bull. 51. iv / 99 pp. index. January, 1940.

MORTGAGES-Foreclosure

Pennsylvania Statute Permitting Acceptance of Deeds by Fiduciaries in Lieu of Foreclosure and Administration of Land So Acquired as Personalty, 53 Harv. L. R. 502-3. (January, 1940).

-General

Georgia Statute Allowing Mortgages Full Recovery for Converted Trees, 53 Harv. L. R. 503-5. (January, 1940).

PROPERTY

Registration of the Title to Land in the State of New York with Supplements as to Experience Elsewhere - prepared by Richard R. Powell for the New York Law Society under a grant from The Carnegie Corporation 1938. Reviewed by Nathan William MacChesnoy, 26 American Bar Ass'n. Journal, 158-9. (February, 1940).

REORGANIZATION (Also see Bankruptcy)

- Jurisdiction over claims against Indenture Trustee for Collusive Breach - Note on Central Hanover Bank & Trust Co. v. President and Directors of the Manhattan Co., 105 F. (2d) 130 (C. C. A. 2d 1939) in 53 Harvard L. R. 483-4. (January, 1940).
- Plan Including Noncontributing Stockholders held not "Fair and Equitable" under 77B - Note on Case v. Los Angeles Lumber Products Co. Ltd. 60 Sup. Ct. I (Nov. 6, 1939) in 53 Harv. L. R. 485-6. (January, 1940).
- Reorganization - The Last Chance by Homer F. Carey and Joseph B. Higgs, 34 Ill. L. R. 549-556. (January, 1940).
- "Fair and Equitable" Plans of Reorganization - Comment in 34 Ill. L. R. 589-596. (January, 1940).

SURETYSHIP

Surety on Fidelity Bond Held Not Liable For Principal's Failure to Account Caused by Defalcation Before Effective Date of Bond - Note on Fidelity & Deposit Co. of Md. v. Port of Seattle, 106 F. (2d) 777 (C. C. A. 9th, 1939) in 53 Harvard L. R. 495-6. (January, 1940).

ZONINGMissouri

An Act authorizing county courts of counties...to provide for country planning and zoning...Missouri, (1939). Laws, Statutes, Etc. 14p. (Senate Bill No. 12, 60th General Assembly.)

· HOUSING · LEGAL DIGEST

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MARCH 1940

"It has not been long since most home owners were owners in only a technical sense, staggering under a mortgage burden, that allowed few ever to possess their properties debt-free. Short-Term, straight mortgages were carried for only a few years and were renewable only at heavy fees; on top of these were second and third mortgages bearing extortionate charges. But under the leadership of this Administration there has been developed a new program of home ownership based on long-term, amortized, direct-reduction loans bearing the lowest interest rates in the Nation's history,-- a program which swept away second and third mortgages and saved home buyers hundreds of millions of dollars in interest alone. Not only were financing charges on homes reduced, but the standards set by Government-sponsored programs began to give American home seekers the kind of home they deserve."

Honorable William B. Bankhead,
Speaker of the House of Representatives.

(From an address before the Central Housing Committee.)

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE
SUB-COMMITTEE ON LAW AND LEGISLATION

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The Editors of the HOUSING LEGAL DIGEST endeavor to present as completely and impartially as possible material relating to housing legal problems; but they assume no responsibility for opinions expressed herein and no inference may be drawn as to their agreement or disagreement with viewpoints expressed.

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The February 1940 issue of "United States Government Manual", prepared by the United States Information Service of the Office of Government Reports, Executive Offices of the President, is now available.

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DECISIONS

BANKRUPTCY - FRAZIER-LEMKE ACT

(In re Lysinger, Feb. 7, 1940, U.S.D.C., S. Iowa. 8 U. S. Law Week 314.)

After commencement of proceeding under Frazier-Lemke Act, court is not required as a matter of law to stay foreclosure proceedings.

The commencement of proceedings under the Frazier-Lemke Act does not require the court, as a matter of law, to stay the prosecution of foreclosure proceedings. The court has power after the commencement of the proceedings to permit a continuance of a foreclosure action on a finding that the mortgaged property is burdensome to the estate.

In the instant case, the commissioner erred in holding otherwise on the theory that under the recent decision of the Supreme Court of the United States in John Hancock Mutual Life Insurance Co. v. Bartels (7 LW 663), there can be no release of the real estate when proceedings have been commenced since the statute has to do with administration and not with liquidation.

"I am satisfied that the recently decided Bartels case does not go as far as the commissioner's interpretation thereof, as the court expressly said: 'We are not here concerned with questions which may arise in the course of the administration under the statute, but merely with the duty to follow the procedure which the statute defines and the District Court failed to observe.' And the Supreme Court in the Wright v. Vinton Branch, 300 U.S. 400, case indicated that in the due course of the administration of the Act there was some latitude in the administration where it appears that to carry out the exact provisions of Subsection(s) would substantially affect the security of the secured creditors."

However, the commissioner is not warranted in releasing the property as burdensome to the estate by the mere fact that the value of the real estate is less than the security. Nor is inability to pay in full the entire debt structure at the end of the three year period alone sufficient. In the instant case, the action of the commissioner is sustained since the court can find no reason to interfere with the commissioner's conclusion that the land should not be released from administration.

BANKRUPTCY - ORDERS OF COURT

(In the Matter of D. I. Cooper, Bankrupt, District Court of the United States for the Eastern District of Oklahoma. Decided February 16, 1940.)

In a proceeding under Section 75 of the Bankruptcy Act, an order sustaining a motion and dismissing the proceeding as to mortgaged realty and authorizing the mortgagee to proceed with foreclosure in a state court is such an order as may be appealed from, and if not appealed from, becomes final and binding whether right or wrong.

D. I. Cooper, a mortgagor to HOLC, filed a proceeding as a farmer under Section 75 of the Bankruptcy Act. He was adjudged a bankrupt under the provisions of subsection(s). Thereafter, HOLC filed a motion to dismiss the proceeding on the grounds that it had not been filed in good faith, no bona fide plan or offer of composition or extension had been submitted, and there was no reasonable probability of eventual debt liquidation, the real estate not being worth the amount of the debt and there being no hope of rehabilitation. On September 6, 1939, the court sustained the motion of HOLC and entered an order dismissing the proceeding in so far as it affected the realty mortgaged to HOLC and authorizing HOLC to proceed with the foreclosure of its mortgage in the state court, which it did.

After the decision of the Supreme Court of the United States on December 4, 1939, in the case of John Hancock Mutual Life Insurance Co. v. Benno Bartels, Cooper filed a motion to vacate the order of September 6, 1939, and to reinstate the proceeding, the basis of the motion being that the court was without authority to enter the order of September 6, 1939, and that said order was void. The court held that the order of September 6, 1939, was not void but was such an order as could have been appealed from had an appeal been taken at the proper time; that the time for appealing had expired, and that said order had therefore become final, whether right or wrong. The court, relying on *McWilliams v. Blackard*, 96 Fed. (2d) 43 and *Marcy v. Miller*, 95 Fed. (2d) 611, denied Cooper's motion to set aside the order of September 6, 1939, and refused to reinstate the proceeding.

BUILDING TRADES PROBE BY THE DEPARTMENT OF JUSTICE

Another conviction against violation of the Sherman Anti-trust Act in the building industry has been obtained by the Department of Justice.

The Southern Pines Association of New Orleans, et al., on

February 23, 1940, entered a plea of Nolle Contendre and was fined \$10,000. Two other defendants were fined \$1,000 each.

In this case, the Department of Justice obtained prosecution on the following violations of Section I of the act: a) unlawfully fixing uniform, arbitrary and non-competitive prices in Southern Pine territory; b) curtailing and restricting the amount of Southern Pine lumber produce; c) maintaining and enforcing an agreed policy on distribution, thereby controlling channels through which said lumber was and is distributed to the consuming public; d) maintaining and enforcing certain practices and rules, together with promotion activities that have unjustly excluded others from engaging in said trade and commerce.

CONSTITUTIONAL LAW - HOUSING AUTHORITIES ACT

(State of Ohio, ex rel Ellis, etc. v. Sherrill, etc. (Decided February 28, 1940.)

If a plan as formulated by a local housing authority comes within the purview of the housing act and meets the approval of the USHA, whereby the latter is willing to lend Federal funds in furtherance of the local plan, a court may not interfere.

This case involved a writ of mandamus to compel the city manager of Cincinnati to sign and execute a contract (cooperation and equivalent elimination agreement) with the Cincinnati Housing Authority for the purpose of aiding and facilitating the execution of a low-rent housing program. The city manager had been authorized and directed to sign the contract under a city ordinance. He refused because of an expressed doubt as to the validity of the action of the city council and of the constitutionality of the state housing enabling acts.

An answer consisting of seven defenses was filed. A demurrer thereto was sustained as to all defenses except the third (Docket No. 27410, Court Journal 35, p. 441, Jan. Term, Supreme Court of Ohio; Reported in 64 HLD 5) which stated, in substance, that the money to be lent by the USHA to the Cincinnati Housing Authority for the construction of low-rent housing projects on vacant land would not, as planned, constitute (a) "low-rent housing", or (b) "slum clearance" as contemplated by the USHAct; and that the proposed loan, being neither for low-rent housing nor for slum clearance was unauthorized by the USHAct.

Testimony by deposition was taken on the issues joined and this decision is confined to such issues, the constitutionality of the Ohio Housing Authority Law having been previously upheld. In granting

the writ, the Supreme Court of Ohio stated:

"An examination of the evidence presented in the pending case shows on the whole a carefully conceived and balanced plan to abolish selected slum areas in the city of Cincinnati and to provide low-rent dwelling units within the municipal limits for families of low incomes, in general conformity with the purpose and design of the controlling legislation.

"If a plan as formulated by a local authority comes within the purview of the housing act and meets the approval of the National Housing Authority, whereby it is willing to lend Federal funds in furtherance thereof, a court may not interfere.

"As we view the situation, no valid or sufficient reason exists for the refusal of the respondent to sign the contract as directed by the city ordinance."

CONSTITUTIONAL LAW - POLICE POWER

(City of Rochester v. Olcott, et al., City Court of Rochester, Criminal Branch, Monroe County, 16 N.Y.Supp. 2d 256.)

The owner of a trailer, having complied with all sanitary requirements under municipal ordinance, cannot be subjected to the requirement of procuring a permit to occupy trailer as a residence, since, like the owner of a dwelling, owner of a trailer may be required to conform to sanitary provisions, but, having complied therewith, he may then occupy without a permit. The use of structures for dwellings may lawfully be interfered with by the state or an authorized subdivision through sanitary requirements, building codes and by zoning restrictions.

The defendants are husband and wife. They were charged with unlawfully using a trailer as a residence for more than a year without having a permit therefor issued by the Commissioner of Public Safety, in violation of the Penal Ordinance of the City of Rochester relating to trailers. Violation is punishable by imprisonment or a fine, or both.

The defendants challenged the constitutionality of this ordinance which provides as follows:

"(1) That no trailer shall be used for a residence for more than forty eight hours without a permit by the Commissioner of Public Safety; (2) That no permit shall be issued unless the trailer shall be provided with certain specified sanitary equipment connected with the City sanitary sewer; and (3) that such permit may be revoked at any time by the Commissioner of Public Safety or the Council of the City of Rochester."

It was urged by the city that the ordinance was a proper exercise of the police power and that the power is "exercised to promote the health, comfort, safety and welfare of society". But the application of the power is not always simple or easy. The general welfare of the people is to be considered, and even under such circumstances private property cannot be taken for a public purpose without just compensation.

The court said that "that part of the ordinance requiring specified sanitary equipment, pertains to and is intended to promote the health of those occupying the trailer and the comfort and welfare of those in the neighborhood . . .

"If a structure does not menace the health or welfare of the person or family living it, nor of the neighborhood around it, then may a permit be required of its owner before he may legally occupy his property for the very purpose for which it is lawfully equipped?"

The court held that the city could not require the defendant to obtain a permit to live in his house. It said: "Authority to permit implies power to refuse. A permit is not a contract. It is not property. It may be revoked. People ex rel. Lodes v. Department of Health, 139 N.Y. 187, 192, 82 N.E. 187, 13 L.R.A., N.S. 894; Fuller v. Schwab, 124 Misc. 659, 280 N.Y.S. 239. If a permit may be required of the owner to occupy a fit structure, he then holds his shelter at the whim of a dictator.

"The use of structures for dwellings may lawfully be interfered with by the state or an authorized subdivision thereof, through three recognized methods: (1) Through sanitary requirements, (2) by building codes, and (3) by zoning restrictions. The test of legality of the requirement, the regulation or the restriction is; is it related to and aimed at promoting the health, the comfort, the safety or the welfare of the community?

" . . . The owner of a trailer, having complied with all sanitary requirements applicable to dwellings for single families, may

no more be subjected to the requirement of procuring a permit to occupy it as a residence, than may the owner of a newly constructed or altered single dwelling be required to obtain a permit to occupy it. He, like the owner of a dwelling, may be required to conform to sanitary provisions. But having complied, he may then occupy . . .

"It is well settled that a municipality may grant or refuse permits to conduct any business affecting the health, comfort or safety of its inhabitants. *Fuller v. Schwab*, 124 Misc. 659, 280 N.Y.S. 289, 290. To accomplish these objectives, the state or municipality may regulate such businesses provided the regulation is not unreasonable. *City of Rochester v. Macauley-Fien Co.*, 199 N.Y. 207, 92 N.E. 641, 32 LRANS., 554; *City of New York v. Williams & Price*, 15 N.Y. 502. But using a trailer as a residence is not conducting a business. Shelter is a condition precedent to life itself.

"In troubled times like these, when, owing to the economic maladjustment, when the amount of unemployment is almost unparalleled, when the demands of social and economic welfare of our citizens challenge to the utmost, the capacity of the state to meet and satisfy them, it would seem that a married couple, who are willing to accept the modest accommodations of a trailer for more than a year, should be commended, rather than they should be driven from its sheltering walls out into the street! This ordinance which demands a permit, before a trailer which offends no zoning restriction, no building requirement, may lawfully be used as a residence, however complete its sanitary equipment, a permit that is summarily revocable without just cause, fails to meet the test by which the exercise of police power must stand or fall. It is not related to the health, comfort, safety or welfare of the community. It deprives the owner of a property right guaranteed by the Constitution, the right to occupy his trailer lawfully equipped, as a residence. It is invalid. The information is dismissed."

COVENANTS - DEEDS

(*Moore et al v. Kimball et al.* ----Mich.----, 289 N.W. 213.)

A building restriction, unless perpetual, terminates with expiration of the time limited for its duration. The supposed intention of parties to a deed cannot overcome their expressed agreements.

The plaintiffs, home owners in a subdivision in Detroit, filed suit to restrain defendant from erecting a building to be used for

dental and medical offices on a vacant lot which he had purchased in the subdivision. When the plat of the subdivision was recorded on December 23, 1913, in the office of the register of deeds, and the sale of the lots therein commenced, the owners of the subdivision included in each of the deeds to lots purchased restrictive covenants providing that no stores, etc., be built thereon and that nothing but one dwelling houses and necessary outbuildings be erected thereon. It further provided that the "restrictions shall run with the land and shall continue in force for a period of 25 years from the date of the subdivision of said land". Over 250 homes have been built on the land since its subdivision.

The defendant purchased his lot in December 1937 and the 25-year restriction expired in 1938. Thereafter the defendant sought to erect the building in question. Plaintiffs claimed that the lot of defendant is burdened with a reciprocal negative easement, restricting the owner of such property to compliance with the conditions set forth in the deeds, but defendant contended that the restrictions expired at the end of the 25-year period and that his lot is no longer subject to them. The trial court found for plaintiffs and defendant appealed. Upon appeal the decree of the circuit court was vacated. The plaintiffs claimed that the subdivision had become a residential district in conformance with the plan of development for this district, and claimed that because of notice on the part of defendant, his property was subject to a reciprocal negative easement, restricting the land thereafter to conformity with the plan.

In regard to reciprocal negative easements the court said: "Reciprocal negative easements are discussed in 14 Am. Jur. p. 612, as follows: 'Under certain circumstances a restrictive agreement is implied. The view has been taken that where the owner of two or more lots situated near one another conveys one of the lots with express building restrictions applying thereto in favor of the land retained by the grantor, the servitude becomes mutual, and during the period of restraint, the owner of the lots retained may do nothing that is forbidden to the owner of the lot sold. Such an implied covenant arises where the deed of conveyance provides that the conditions are for the benefit of all present and of future owners of lots in the subdivision. Such a restriction is said to create a reciprocal negative easement, which is enforceable against the grantor or a subsequent purchaser of the lot from him with notice, actual or constructive. The general view, however, is that in the absence of a permanent building scheme there are no implied restrictions upon the remaining lots . . . §199.

'Where a permanent building scheme is established for the benefit of the purchasers of various lots in the tract, the parts of the

tract remaining in the hands of the vendor or subsequently sold are bound to the observance of the restrictive covenants. It is not necessary, where there is a general building plan or scheme covering a tract of land, that the restriction be contained in the deed to each lot. If the general plan has been maintained from its inception, has been understood, accepted, relied on, and acted upon by all in interest, it is binding and enforceable on all inter se.' § 200 . . . "

Then the court went on to say in overruling the lower court's decision: " . . . It is claimed that the parties intended that the expression of the 25-year period of restriction was for the purpose of building up a residential neighborhood; that the period was defined merely in order to terminate the responsibility of the subdividers 'in protecting the proper development of the street in the way it was originally laid out'; that it was contemplated that there would be no changes after such period, and that the 'general common plan was to keep it as a residence street permanently'.

"The supposed intention of the parties cannot overcome their express agreement, 18 C.J. p. 254; and a restriction will not be enlarged or extended by construction even to accomplish what it may be thought the parties may have desired, had a situation, which later developed, been foreseen by them at the time the restriction was written. Davidson v. Sohler, 220 Mass. 270, 107 N.E. 958. Where the language of the restriction is clear, the parties will be confined to the language which they employed. A building restriction, unless perpetual, terminates with the expiration of the time limited for its duration. Welch v. Austin, 187 Mass. 256, 72 N.E. 972, 68 L.R.A. 189; Eckhart v. Irons, 18 Ill. App. 173.

"It is the general rule that restrictions will be construed strictly against those claiming to enforce them, and all doubts resolved in favor of the free use of the property . . .

"Upon a review of the record we are of the opinion that the restrictions were clear and unambiguous. They terminated upon expiration of the time provided for their duration. They cannot be enlarged beyond their plain language to encompass that which was not expressed; and they cannot be extended by evidence of what the parties intended by such restrictions; but are conclusive on their face. As was said in a similar instance in Boston Baptist Social Union v. Boston University, 183 Mass. 202, 66 N.E. 714, 715, 'If it had been the intention of the grantor to put a restriction upon the land for all time, it would have been easy to say so'; and in Tabern v. Gates, 231 Mich. 581, 204 N.W. 698, 699, in a controversy involving building restrictions, the court

remarked, in answer to one of the contentions made, that 'it would have been sufficient to have inserted a general restriction for residential uses'. The supposed intention of parties cannot overcome the express language of the restrictions in this case.

"From the foregoing, it is our conclusion that no claimed restriction is enforceable against defendant, since the restrictive period has expired and no negative reciprocal easement runs against defendant's premises after such time."

MORTGAGES - FORECLOSURE - SALE PRICE

(HOLC v. James P. H. Callahan, et ux. ----Wash.----. Opinion given February 9, 1940.)

Refusal of trial court to confirm foreclosure sale because of mere inadequacy of price unattended by any irregularities or unfair conduct or advantage taken, held to constitute an abuse of discretion.

In an HOLC foreclosure suit in the Superior Court of Grays Harbor County, Washington, its judgment on its note was for \$6,031.42, plus interest, attorney's fees and some other items. At the foreclosure sale HOLC bid in the property for \$5,600, leaving a deficiency of \$669.09. At the date of sale, the property was subject to unpaid taxes and assessments amounting to approximately \$600. The mortgagor-judgment debtors, Callahan and wife, filed objections to confirmation of the sale and upon the hearing thereof the trial court entered an order denying confirmation of the sale, and directing that the property be resold. From this order, HOLC appealed to the Supreme Court of the State of Washington. The further facts appear from the following quotation from the opinion of the Supreme Court:

"The order appealed from recites that the amount bid for the property by the plaintiff (HOLC) was wholly inadequate, for the reason that the actual value of the property at the time of sale was far in excess of the amount of plaintiff's judgment and the amount bid by plaintiff. The order also recites that an appraiser employed by plaintiff, 'consulted the defendant, Callahan, as to the rental value, and said defendant fixed this value at \$50 per month, which would make a total for the year of redemption of \$600; that this appears to the court as an attempt on the part of the plaintiff to deprive the defendants of the value of the right of possession during the period of redemption'.

"The evidence introduced on behalf of appellant (HOLC) is to the effect that the reasonable market value of the property at the time

of the sale did not exceed the amount bid. Several witnesses, testifying on behalf of respondents, valued the property at from \$7,800 to \$8,500. From the record, it appears that, while the house should have a rental value of fifty dollars per month, it would probably be difficult to obtain a tenant who would pay that amount for it.

"It is admitted that the notice of sale required by law was given, and no objection to the sale is urged, save the alleged inadequacy of the price bid. Respondent James P. H. Callahan deposed that the purchase price of the property in 1928 was slightly over nine thousand dollars; that immediately after purchasing the property, he expended four thousand dollars in improving the house, and one thousand dollars in improving the yard, making an entire investment of approximately fourteen thousand dollars; and that thereafter he expended another thousand dollars in betterments. Mr. Callahan, after allowing for depreciation and taking into consideration the decreased value of property, stated that, in his opinion, the house had a fair market value of \$8,500, against which he charged the unpaid taxes and assessments in the sum of six hundred dollars, giving the property, in his opinion, a net value of \$7,900.

"Rem. Rev. Stat., Sec. 591, provides for the confirmation of sales of real estate under judicial process, paragraph (2) thereof reading as follows:

"If such objections be filed the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be as upon an execution received of that date'.

"The section of the statute quoted vests in the court, in the exercise of its authority to confirm sales of land under execution, a reasonable discretion, in the exercise of which the court may refuse to confirm a sale, if convinced that a contrary ruling would be unjust. *Mellen v. Edwards*, 179 Wash. 272, 37 P (2d) 203.

"Mr. Callahan valued his property at \$7,900 net, while appellant's bid was in the amount of \$5,600, or \$2,300 less than respondent's personal opinion as to the value of his property.

"The trial court, in the portion of the order refusing a

confirmation of the sale, stated that it seemed probable that appellant was endeavoring to deprive respondents of the value of their right to possession of the property during the year of redemption, Mr. Callahan having stated that in his opinion the rental value of the property should be fifty dollars per month. It might be urged with equal force that appellant took into consideration the accrued taxes and assessments, which also amounted to approximately six hundred dollars."

Having thus stated the case, the court reviewed its numerous prior decisions in similar cases, including cases holding that mere inadequacy of price, unaccompanied by any irregularities or unfair conduct or advantage, is not sufficient to justify the setting aside of a judicial sale, disposed of the case as follows:

"The trial court did not base the order refusing confirmation of the sale upon the ground that there was reasonable probability that a higher price could be obtained at a resale; indeed, the record affords no ground for such a holding. We are convinced that the trial court erred in refusing to confirm the sale. The amount bid is almost five-sevenths of the highest estimate of the value of the property. Our decisions hereinabove referred to afford no basis for the court's refusal to enter an order of confirmation, and while, as we have stated, the court has a wide discretion in passing upon such matters, the order appealed from transcends such discretion. The order appealed from is reversed, with instructions to the trial court to enter an order confirming the sale."

MORTGAGES - MORATORIUM

(Holt, et ux v. Birmingham Nat. Bank,----Mich.----,289 N. W. 176.)

The provision in the 1933 Michigan mortgage moratorium statute, that such statute should not apply to any mortgage executed after 1933, was not repealed by the 1938 statute restricting moratorium legislation to homesteads but not referring to date of execution of mortgage.

"Defendant instituted proceedings to foreclose a mortgage dated December 12, 1936, covering property owned by plaintiffs in the City of Birmingham. A commissioner's deed was executed on December 19, 1938, placing the expiration of the redemption period on June 14, 1939.

"On June 9, 1939, plaintiffs filed their bill of complaint

herein, praying for relief under the provisions of the moratorium statutes . . . Defendant moved to dismiss on the ground that the court had no jurisdiction to grant the relief sought inasmuch as the mortgage was executed subsequent to February 14, 1933. Plaintiffs appeal from the order of the trial court dismissing the bill, claiming that the following provision found in section 8 of Act No. 98, Pub. Acts 1933, has been repealed by subsequent amendatory acts. 'This act shall not apply to any mortgage executed subsequent to February fourteen 14, nineteen hundred thirty-three 1933'.

"The original statute granted moratorium relief without regard to the manner in which the real estate covered by the mortgage was held by the party seeking relief. Section 14 of Act no. 7, Pub. Acts 1938 (Ex. Sess.), restricted the application of the legislation to homesteads

"The foregoing provision was re-enacted by section 14 of Act No. 316, Pub. Acts 1939, Stat. Ann. Supp. Pamph. Sec. 27.1333 (1). Plaintiffs argue that the phrase 'owned and occupied as a home or legally claimed as a homestead at any time from and after February fourteen, nineteen hundred thirty three', read in conjunction with section 4 of the amendatory acts of 1938 and 1939, providing that the chancery foreclosure must have been pending on or commenced subsequent to June 2, 1933, indicates a legislative intent to extend the relief to all homesteads, regardless of the date of the execution of the mortgage under foreclosure. Thus, they contend that section 8 of Act No. 98, Pub. Acts 1933, quoted supra, expressly limiting the application of the relief to mortgages executed subsequent to February 14, 1933, has been repealed by implication.

"The language of the various sections does not indicate to us a change in legislative intent which plaintiffs are apparently able to find. Section eight of the original act has not been expressly repealed. Although it was not reenacted by any of the subsequent amendatory acts, failure to re-enact does not give rise to an implied repeal. *Sambor v. Home Owners' Loan Corp.*, 283 Mich. 529, 278 N.W. 674. Furthermore, we fail to discern any inconsistency or repugnancy between said section 8 and the sections of the later statutes relied upon by plaintiffs as the source of the claimed repeal thereof.

"The requirement of section 4 of Act No. 7, Pub. Acts 1938 (Ex.Sess.) and Act No. 316, Pub. Acts 1939 that the foreclosure must have been pending on or commenced after June 12, 1933, is plain and self-explanatory. The same is to be said of section 14 of the two statutes last mentioned. The legislature desired the relief to be

extended only in cases where the claim of homestead was asserted subsequent to February 14, 1933. This feature has nothing to do with the date of execution of the mortgage, and the provisions of section 8 of the original act are still applicable."

MORTGAGES - SECOND MORTGAGES

(Max Markowitz v. Rosa Berg, New Jersey Court of Errors and Appeals. Decided January 25, 1940.)

Second mortgage taken without knowledge or consent of HOLC and in violation of its rules and regulations is unenforceable and void.

Prior to the making of a loan by HOLC there was an outstanding judgment in the sum of \$782.44 which was a lien on the realty to be mortgaged to HOLC. The holder of the judgment agreed to and did receive from HOLC \$200 in consideration for which he released the lien of his judgment. Then, without the knowledge or consent of HOLC, he took from the mortgagor to HOLC a second mortgage in the sum of \$250. When he sought to foreclose the second mortgage the Court of Chancery of New Jersey dismissed his suit and cancelled his second mortgage because taken in violation of the rules and regulations of HOLC. On appeal to the New Jersey Court of Errors and Appeals, the opinion was as follows:

"We adopt without reservation the views of the learned Vice Chancellor (a) that the mortgage in suit, if made without the knowledge of the Home Owners' Loan Corporation, contravenes the fundamental policy of the Home Owners' Loan Act (12 USCA sec. 1461, et seq.) and the rules and regulations formulated in pursuance of the authority thereby granted (it seems to be conceded that these rules and regulations have the force of law), and is therefore void, and (b) that such knowledge as Epstein, the 'fee attorney', had of the existence of the mortgage, or of the intention of the home owner thus to assume payment of part of the judgment debt so agreed to be cancelled, is not imputable to the Corporation.

"But these conclusions proceed from the hypothesis that the judgment creditor had bound himself to accept the Corporation's bonds in the aggregate sum of \$200, in full satisfaction of his claim against the home owner under the judgment, and to release the lands from the lien thereof, and to enter into a covenant not to 'proceed on the judgment as against the home owner', and this question is not discussed in the opinion.

"There is no occasion to determine whether the attorney upon the record of the judgment was vested with authority, on the judgment

creditor's behalf, to enter into the agreement to settle the judgment debt upon the stated terms. He presumed to do this by letter dated December 29, 1934; and the evidence tends to show that, although the judgment creditor learned of his action some time during the following month, and repudiated it, notice of such repudiation was not given to the Home Owners' Loan Corporation (it is frankly conceded that this course was not pursued because it was not deemed necessary), and the Corporation consummated the loan on January 2, 1935, unaware of the judgment creditor's repudiation of the agreement thus made with it on his behalf by his attorney of record, and of his exaction of the mortgage in suit in payment of a portion of the judgment debt so agreed to be cancelled.

"In such circumstances, appellant is precluded by estoppel in pais from now asserting the validity of the mortgage taken in violation of the policy of the Home Owners' Loan Act. It is a corollary of the considerations of public policy adverted to that he was under a duty to advise the Home Owners' Loan Corporation of his repudiation of the agreement thus presumed to have been made on his behalf with the Corporation. He knew that, in the absence of such notice, the Corporation would consummate the loan on the supposition that the judgment debt would be in fact deemed satisfied in accordance with the agreement, and that no part of the balance would continue as a lien against the lands in the form of a subsequent mortgage. His ignorance of his obligation does not serve to excuse him from the consequences of his inaction.

"In this situation, there is an estoppel to deny agency, 2 C.J.S. p. 1063, et seq. While the silence of a purported principal may not indicate his affirmance, his failure to manifest a repudiation may subject him to liability to one who, as he knows, is acting in the belief that there has been authorization or ratification. If a person knows or has reason to know that another has been deceived by the act of the purported agent, and is likely to act upon his erroneous belief, he must, to avoid liability, take such steps to undeceive the third person as would be taken by a reasonable person having ordinary regard for the interests of others. A.L.I., Agency, sections 94d., 103c. See, also, *Frank v. Board of Education of Jersey City*, 90 N.J.L. 273. Decree affirmed."

MUNICIPAL CORPORATIONS - SALE OF REAL ESTATE - BROKERS FEES

(Cody Realty & Mortgage Co. v. City of Winston-Salem,----
N. C.----, 6 S.E. 2d 501.)

A city has authority to employ a broker on a commission
basis to secure a responsible bidder at a public sale of
tax forfeited realty.

The question presented in this case is whether a city had power, under its charter and the general statutes, to enter into a contract with a broker (plaintiff herein) and to pay for services rendered in selling at public auction land acquired by the city.

The court held that the city did have such power and in holding for the plaintiff, for the recovery of its services on the contract, said:

"It is an established principle of law that a municipal corporation has only such powers as are granted to it by the General Assembly in its charter or by the general statutes applicable to all municipal corporations, and that it can exercise only the powers expressly granted and those necessarily implied in or incident to those expressly granted. 'But it is also true that a municipal corporation may exercise all the powers within the fair intent and purpose of its creation which are reasonably necessary to give effect to the powers expressly granted, and in doing this it may exercise discretion as to the means to the end. Smith v. Newbern, 70 N.C. 14, 16 Am. Rep. 766; 1 McQuillin Municipal Corp., sec. 367'. Riddle v. Ledbetter, 216 N.C. 491, 5 S.E. 2d 542; Kennerly v. Dallas, 215 N.C. 352, 2 S.E. 2d 538.

"Both by the statutes relating to municipal corporations (C. S. §§ 2688, 2787(2), and by the charter of the city of Winston-Salem (Chapter 232, Private Laws 1927) power is given to the city to sell at public auction real property which it may own (Asheville v. Herbert, 190 N.C. 732, 130 S.E. 861), and to appropriate the proceeds to public purposes not inconsistent with its granted powers. Adams v. Durham, 189 N.C. 232, 126 S.E. 611.

"Applying these principles to the facts in the instant case, we conclude that, as incident to the power of the city to sell the property in question at public outcry, in order to secure liquidation of real estate holdings acquired for the protection of its revenues, the city was vested with discretion as to the method of effectuating that purpose in the public interest within the limits of its powers, and that the employment of the services of an experienced real estate broker, like that of an auctioneer, was an expense incident to the sale

which it was not beyond the power of the city to contract. The necessity of securing qualified assistance in making the sale flowed from the evident fact that on previous auction sale or sales no responsible bid in an amount sufficient to reimburse the city for its taxes and costs of sale had been obtained."

TAXATION - COLLECTION PROCEDURE

(Housing Authority of City of Butte v. Bjork, ----Mont.----
98 P. (2d) 324.)

A local housing authority may enjoin a county from selling property for delinquent taxes after the county has received the fair market value thereof under condemnation proceedings, the amount received being less than that due for delinquent taxes.

This was a suit by the housing authority against Bjork, the County of Silver Box, and others to enjoin the county from selling a certain lot in the city of Butte for delinquent taxes. A judgment for the authority was affirmed on appeal.

The particular property in question had been condemned in eminent domain proceedings in connection with the construction of a low-rent housing project. It had been owned by one Erb who had been personally served in the condemnation proceedings, but made no appearance at the hearing. The lot was appraised at \$100 fair market value. At the time delinquent county taxes against the lot amounted to \$210.64. The county received the \$100.00 and then threatened to sell the lot at a tax sale for the unpaid balance.

The Supreme Court of Montana stated the general rule applicable to the question to be: "'Where land is taken under eminent domain by a municipality or a like entity, a lien for taxes is extinguished.'"

In other words, the lien for taxes follows the funds fixed as compensation for the property.

The decision points out, however, that while the county may not sell the property for delinquent taxes so far as Erb's interest was concerned, the authority acquired only the interest of those persons who were served with summons, either personally or by publication; that if any persons with interests therein were not served, they may still assert their rights and the county's lien for taxes against their interest would be unaffected by the condemnation proceedings.

TAXATION - HOUSING CORPORATIONS - FEES AND CHARGES

(People v. Brooklyn Garden Apartments, Inc., Supreme Court, Appellate Division, First Department, 15 N.Y.S. 2d 890.)

The statutory charge against limited dividend corporations created under New York State housing law for expenses of inspection, supervision, and auditing by state board of housing is a "tax" or "fee" within statute exempting such corporations from taxes and fees, as applied to a housing project completed prior to adoption of amendment to the state housing law authorizing charge for supervision expenses of the state board of housing.

Defendant is a private limited housing corporation organized in 1928 under the provisions of the New York State Housing Law. In 1933 the statute was amended to provide that the State Housing Board could fix a rate of charges to be made against limited dividend housing companies for expenses incurred by the Board for inspection, supervision and auditing. Defendant claims exemption under the following provision which has not been amended: "Any public limited dividend housing company formed hereunder shall be exempt from the payment of any and all franchise, organization, income, mortgage recording and other taxes to the state and all fees to the state or its officer."

In a decision by the New York Supreme Court (58 HLD 2) it held that the charges imposed for inspection, supervision and auditing were not a fee or tax. However, the appellate division has reversed that decision and now it is held that the charges are a tax or fee. The appellate division said:

" . . . We think that plaintiff's view is untenable so far as it pertains to defendant's projects which were completed prior to the adoption of the 1933 amendment to Section 16 of the State Housing Law authorizing the charge for supervision expenses.

" . . . no case has been called to our attention which has held that a charge exacted by a public board or officer to represent the cost of supervision or inspection is not a fee. On the contrary, charges imposed upon companies to reimburse the government or any of its agencies for expenses of regulation or inspection have almost uniformly been described by courts as 'taxes' and 'fees'. Great Northern Railway Co. v. Washington, 300 U.S. 154, 156, 170, 171, 57 S.Ct. 397, 81 L.Ed. 573; D. E. Foote & Co. v. Stanley, Comptroller of State of Maryland, 232 U.S. 494, 504, 505, 34 S.Ct. 377, 58 L.Ed. 698; Washington Ry. & Electric Co. v. District of Columbia, 64 App. D.C. 243, 77 F. 2d 366. Likewise, the statutes of many states, in providing for the

exaction of charges for regulation and investigation for public utilities, describe the charge as a 'fee'. . . .

"It is a familiar rule of statutory construction that in interpreting a law, that sense should be adopted which promotes in the fullest manner the apparent policy and object of the Legislature An examination of the original housing law discloses the legislative plan. In order to provide low cost housing for its needy citizens and to improve conditions which the statute itself, . . . declared to be 'a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state', the Legislature, among other things, included the exemption provision in the State Housing Law to induce people to invest in such building operations. . . . These provisions are all made to apply to private limited dividend housing companies by Section 51 of the Act. Obviously it was not the intention of the Legislature to limit the exemption provision in such a way that the investor would find the enterprise in which he risked his money for a limited return was not exempted from payment of any and all taxes to the state and all fees to the state or its officers, but might still be subject to some fee or charge of a character not then in existence and not contemplated by the statute itself but subsequently imposed after the lapse of seven years."

"We do not say that the amendment of 1933 is inapplicable to housing projects executed after the adoption of the amendment. If defendant or any other corporation chose to undertake a new building subsequent to the adoption of the amendment, it would do so with full knowledge that the exemption provided by Section 39, Unconsol. Laws, § 2289, had been limited by the provisions of Sections 14 and 16 as amended by the act of 1933, Unconsol. Laws, §§ 2264, 2267. This defendant, however, was induced to organize and to complete its operations in reliance upon the exemption tendered to it under the original housing law. When defendant's projects were planned and completed, Section 16 and Section 39 of the Housing Law, read together, gave not the slightest indication that the necessary expenses of its enterprise would include 'a charge to be fixed by the board to reimburse it in whole or in part for its expenses of inspection, supervision and auditing'.

"To attempt to read into the original Housing Law a curtailment of the sweeping tax exemptions therein enacted, by giving retroactive effect to the 1933 amendment, would be inequitable and unjust to those who before 1933 invested in reliance upon such exemptions. 'When the state through its Legislature grants a franchise, privilege, or exemption to a corporation, either in the act of incorporating it or by

other legislation, followed by action of the corporation under or in reliance upon the grant so made, it constitutes a contract, based on a valuable consideration, the obligation of which cannot be impaired by subsequent legislation'. . . ."

TAXATION - LIEN - FORECLOSURE

(HOLC v. James Spratta, et al, Court of Common Pleas, District of Waterbury, Conn. Decided in February, 1940.)

A tax certificate filed in the town clerk's office giving the name of the owners as "Joseph Spratta et al" did not fix a valid lien as against a subsequent mortgagee on property of "James Spratta et al" although it properly described the property of James Spratta and was otherwise in compliance with the statute.

In an HOLC foreclosure suit in Connecticut the opinion of the court was as follows:

"The sole controversy in this suit arises from the attempt of the plaintiff, which is foreclosing a mortgage, to have declared invalid a claimed lien for a tax owed to the City of Waterbury and the claim of the City of Waterbury that such claimed lien be found to be valid and thus to compel the payment of the tax due before the plaintiff or other party to the suit can secure complete title to and possession of the real estate described in the complaint.

"The property stood in the name of James and Ella Spratta when the tax was laid and still stands in their names on the land records. They are still in possession and the title has remained in them at all times since the tax was laid up to the present time.

"On September 30, 1933, within the period provided by law affecting tax liens in Waterbury, the city filed in the town clerk's office in Waterbury a certificate having for its purpose the continuation of the statutory tax lien for a tax due and payable in 1932. In such certificate the property was properly described, the amount of tax due, \$145.96, was correctly stated, and the date when the tax became due was also given. Thus three of the requirements of the statute (General Statutes 1235, as amended) were met. The names of the persons against whose names such tax appeared in the rate bill, however, were given as 'Joseph Spratta et al'. Thus the name of James Spratta, one of the owners, whose name did appear in the rate bill, did not appear on the certificate, nor did the name of Ellen Spratta appear on the certificate.

The statute, as amended in 1931, required that the name of the person as above indicated appear.

"The city claims that the use of the name Joseph instead of James in the certificate is at most only a 'clerical error' and that since there was a compliance with the other requirements of the statute its lien should be held valid. The plaintiff, on the other hand, claims that the error is so substantial as to make the alleged lien of no avail, basing its claim primarily on noncompliance with the terms of the statute, but stressing also the inequity of compelling it to pay a tax when, in 1934, it took the mortgage now in suit without knowledge of the fact that the certificate containing 'Joseph Spratta et al' was really meant to be 'James Spratta et al'. Thus it seeks the application of the equity powers of the court to have the alleged lien removed as an instrument. It is conceded that the plaintiff employed a competent title searcher to examine the land records. The searcher failed to note the claimed lien, as the true name of James Spratta did not appear and he did not search the property one of whose owners appeared to be Joseph Spratta.

"Owing to the long settled policy of our state, as reflected in the statutes and our Supreme Court reports, that the title to real estate should, as far as practicable, appear of record (Bush v. Golden, 17 Conn. 594, 601), the plaintiff and its title examiner cannot be charged with any duty to examine real estate in the name of 'Joseph' Spratta when dealing with land owned by James Spratta. As a direct result of this 'clerical error' the plaintiff failed to discover the claimed incumbrance and loaned the mortgage money in the belief that the real estate mortgaged was free and clear, as nowhere on the land records did a claim for the alleged tax lien here involved appear against property in the names of James Spratta and Ellen Spratta, or either of them.

"In Myer v. Trubee, 59 Conn. 422, at page 426, it is declared to be a long accepted principle that 'as the power of taxation is derived exclusively from statutory provisions, the requirements of the law must be strictly complied with'; adding, 'The taxing body must be careful to discharge its duty with strict accuracy in laying taxes if it would hold individuals to the legal duty of paying them'. While that case involved a claim of error in the assessors' records, in that the real estate was listed in the name of an alleged agent rather than in the names of the real owners of the property, the rule laid down should apply likewise to a situation such as exists here, where the error appears on the land records and would have the natural tendency to mislead any title searcher relying on the requirement that

there must appear in the certificate filed the name of the person against whose name such tax appears in the rate bill.

"The claimed lien is therefore found to be invalid, void and of no effect, not a valid incumbrance, and not to affect the right of the plaintiff or any of the other parties to this suit to take complete title to and possession of the real estate insofar as the claimed lien is concerned, in accordance with the provisions of the judgment to be rendered herein."

TAXATION - MORTGAGE STAMPS

(Charlestown Five Cents Sav. Bank v. White, District Court, E. Mass., 30 Fed. Supp. 416.)

A deed to real estate given by a mortgagee to itself as purchaser at a foreclosure sale pursuant to Massachusetts law, under a power of sale in mortgage, is subject to the Federal stamp tax. A mortgagee, in Massachusetts, may purchase property mortgaged to it at a foreclosure sale and the transaction is of the same character and legal effect as in the purchase by a stranger.

This suit was brought to recover stamp taxes amounting to \$89.50, with interest, and the question presented is whether a deed to real estate given by a mortgagee to itself as purchaser at a foreclosure sale is taxable under the provisions of Section 725 of the Revenue Act of 1932.

The plaintiff was the mortgagee of premises in Boston, Mass. The mortgage in question was given to the plaintiff upon the condition that for any breach thereof the mortgagee had the Statutory Power of Sale. For breach of condition the plaintiff-mortgagee made a peaceable entry upon the premises for the purpose of foreclosing the mortgage under the provisions of the General Laws of Massachusetts, and also duly advertised the premises for sale at public auction under the statutory power and sold the premises to itself, which it was empowered to do under the General Laws of Massachusetts. The treasurer of the plaintiff executed the statutory form of foreclosure deed and affixed thereon internal revenue stamps to the amount of \$89.50, which is sought to be recovered in this suit.

The plaintiff admitted, in its argument, that if the above premises were sold to a third party at the foreclosure sale the deed acquired by the stranger would be subject to the tax provided for in

Section 725 of the Revenue Act of 1932, yet it contended that where the foreclosure deed is acquired by the mortgagee under a valid execution of the power of sale, the effect is merely to cut off the mortgagor's right of redemption and consequently no sale had taken place. It maintained, in support of this contention, that inasmuch as under Massachusetts law the mortgagee takes title to the property conveyed, defeasible only upon the performance of certain conditions by the mortgagor, a foreclosure deed to the mortgagee itself does not transfer or convey any lands, tenements, or other realty sold, within the meaning of Section 725 of the Revenue Code.

The court held that there was a sale and that the plaintiff was subject to the stamp taxes. It said: "Under the language of the Massachusetts statutes cited above and of the mortgage deed in question, it is very difficult in any way to agree with the contention made by the plaintiff. Certainly, under the terms of the mortgage, the plaintiff was given the power to sell the premises upon breach of conditions; all the provisions of the Massachusetts statutes were followed in making a sale; the plaintiff was authorized by the statutes to purchase at the foreclosure sale and under the provisions of Section 14 of Chapter 244, Massachusetts General Laws, Ter. Ed., providing for procedure in foreclosure under a power of sale, the premises are deemed to have been sold and the deed thereunder to have conveyed the premises.

"Further, the Massachusetts Supreme Court in the case of Harlow Realty Co. v. Cotter, 284 Mass. 68, at page 69, 187 N.E. 118, 119, said: 'The law of this commonwealth has long been settled that a mortgage of real estate as between the mortgagor and the mortgagee is regarded as a conveyance in fee in order to give to the mortgagee effectual security for his debt or the performance of some other obligation due to him. It is a conveyance of real estate, or of some interest therein, defeasible upon the performance of a stated condition. The mortgagee is the holder of the paramount title. . . .'

"And the case goes on to say that: ' . . . The mortgagee . . . by selling the same under the power of sale was exercising his title /previously/ acquired . . . ' (Italics supplied). . . .

"The effect of the exercise of the power of sale was to terminate the estate of the mortgagor by forever barring him and those claiming under him from all right and interest in the mortgaged premises, which he had before the sale, and transferring an absolute estate to the mortgagee. The mortgagee could purchase at the sale and the transaction is of the same character and legal effect as in the case of purchase by a stranger.

"The precise point raised here by the plaintiff was decided adversely to its contention in this case, in a case involving the construction of the word 'sale' in an insurance policy, *Boston Co-Operative Bank v. American Central Ins. Co.* 201 Mass. 350, 351, 87 N.E. 594, 23 L.R.A., N.S., 1147. See also, *Schanberg v. Automobile Ins. Co. of Hartford*, 285 Mass. 316, 318, 319, 189 N.E. 105.

"That the transfer to the plaintiff is for consideration of value cannot be denied. When the plaintiff bought at the foreclosure sale and gave deed to itself, it ended the equity of redemption of the mortgagor, and became responsible for the application of the purchase price as though it had received it upon a foreclosure sale to a stranger, and it was bound to apply it to the payment of the mortgage debt. *Helvering v. Midland Mut. Life Ins. Co.* 300 U.S. 216, 57 S.Ct. 423, 81 L. Ed. 612, 108 L.R.A. 436; *Rogers v. Commissioner of Internal Revenue*, 9 Cir., 103 F. 2d 790; *Barry v. Dudley*, 282 Mass. 258, 184 N.E. 815."

UNITED STATES - CORPORATIONS

(*Sam Bezat et ux, v. HOLC*, ----Ariz.----. Opinion February 5, 1940.)

The HOLC is not a foreign corporation within meaning of Arizona statutes. Constitution of Arizona only prohibits corporations organized outside of the limits of that state from transacting business in Arizona upon more favorable conditions than are prescribed by law for similar corporations organized under the laws of Arizona.

In an HOLC foreclosure case the borrowers contended that HOLC is a "foreign" corporation within the meaning of the Arizona statutes and that it could not enforce its mortgages in that state because it had not complied with the Arizona statutes requiring "foreign" corporations to file certified copies of their charters, etc. Since the statutes appeared to define "foreign" corporations as corporations "incorporated under the laws of any other state, territory, or any foreign country", the court held that HOLC (which had been incorporated under an Act of Congress) is not a "foreign" corporation within the meaning of the Arizona statutes. The court held that HOLC is a corporation "organized outside of the limits of this state", within the meaning of the Constitution of Arizona, but that since the Constitution only prohibits such corporations from transacting business in Arizona upon more favorable conditions than the conditions prescribed by law for similar corporations organized under the laws of Arizona, which HOLC has never done, there is nothing to prevent it from foreclosing its mortgages in Arizona.

UNITED STATES - GARNISHMENT

(FHA v. Burrs, ----U.S.----, Vol. 84, No. 8, Law Ed. Advance Opinions, page 427.)

The FHA is subject to garnishment proceedings. The words 'sue and be sued', as employed in a statute conferring authority on a Federal instrumentality to sue and be sued, in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings, including garnishment.

The question presented in this case is whether the FHA is subject to garnishment for moneys due to an employee. The United States Supreme Court in affirming the decision of the Michigan Supreme Court holding that such moneys could be garnisheed said:

" . . . Since consent to 'sue and be sued' has been given by Congress, the problem here merely involves a determination of whether or not garnishment comes within the scope of that authorization. No question as to the power of Congress to waive the governmental immunity is present. For there can be no doubt that Congress has full power to endow the Federal Housing Administration with the government's immunity from suit or to determine the extent to which it may be subjected to the judicial process. Federal Land Bank v. Priddy, 295 U.S. 229; Keifer & Keifer v. Reconstruction Finance Corporation, 306 U.S. 381

"Clearly the words 'sue and be sued' in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. In Michigan a writ of garnishment is a civil process at law, in the nature of an equitable attachment. See Posselius v. First National Bank, 264 Mich. 687. But however it may be denominated, whether legal or equitable, and whenever it may be available, whether prior to or after final judgment, garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words 'sue and be sued' would in general deprive suits of some of their efficacy. Hence, in the absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used those words in their usual and ordinary sense.

"Our conclusion is strengthened by the legislative history of the many recently created governmental agencies or corporations. It shows that in but few instances was a proviso added to the 'sue and be

sued' clause prohibiting garnishment or attachment. The fact that in the run of recent statutes no such exceptions were made and that in only a few of them were any special prohibitions included adds corroborative weight to our conclusion that such civil process was intended . . .

"Petitioner claims that execution should not have been allowed under the judgment. The Act permits the Administrator 'to sue and be sued in any court of competent jurisdiction, State or Federal'. Whether by Michigan law execution under such a judgment may be had is, like the availability of garnishment, *Federal Land Bank v. Friddy*, supra, a state question. And so far as the federal statute is concerned, execution is not barred, for it would seem to be part of the civil process embraced within the 'sue and be sued' clause. That does not, of course, mean that any funds or property of the United States can be held responsible for this judgment. Claims against a corporation are normally collectible only from corporate assets. This is true here. Congress has specifically directed that all such claims against the Federal Housing Administration of the type here involved 'shall be paid out of funds made available by this Act'. § 1. Hence those funds, and only those, are subject to execution. The result is that only those funds which have been paid over to the Federal Housing Administration in accordance with § 1 and which are in its possession, severed from Treasury funds and Treasury control, are subject to execution. Since no consent to reach government funds has been given, execution thereon would run counter to *Buchanan v. Alexander*, supra. To conclude otherwise would be to allow proceedings against the United States where it had not waived its immunity. This restriction on execution may as a practical matter deprive it of utility, since funds of petitioner appear to be deposited with the Treasurer of the United States and payments and other obligations are made through the Chief Disbursing Officer of the Treasury. But that is an inherent limitation, under this statutory scheme, on the legal remedies which Congress has provided. And since respondent obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed. The fact that execution may prove futile is one of the notorious incidents of litigation, as in the fact that execution is not an indispensable adjunct of the judicial process."

ZONING

(Brookdale Homes, Inc. v. Johnson, et al,----N.J.----, 10 A. 2d 477.)

An ordinance under the Zoning Act must bear a reasonable relation to the powers conferred by that act, and one providing that no building should be erected with its roof ridge less than 26 feet above building foundation in a certain residential zone does not promote public health, safety, and general welfare, and hence ordinance was invalid.

The question presented in this case is whether an ordinance adopted by the Town of Bloomfield, amending the original zoning ordinance, which amendment provided that the heights of buildings shall be regulated, is valid. The amendment reads as follows: "(b) Heights. No building shall be erected to a height in excess of 35 feet and no building shall be erected with its roof ridge less than 26 feet above the building foundation. A false front, cupola, tower or similar part of a building shall not be considered in computing the minimum height of a building".

The plaintiff made application to the Inspector of Buildings of Bloomfield for a permit to erect a one-family dwelling house and filed its plans and specifications for the building. The plans and specifications disclosed the fact that the proposed building was to be only 21 feet high from its foundation to its roof ridge. The building inspector refused to issue the permit upon the ground that the ordinance above mentioned prohibited the erection of any building in the zone in question less than 26 feet above the building foundation. The Chief Justice allowed a writ of certiorari to review the ordinance.

The only contention that the prosecutor bases his claim on is that the ordinance is repugnant to the State and Federal Constitutions so far as it fixes a minimum height for buildings. The court upheld this contention and said:

"It is settled that an ordinance under the zoning act must bear a reasonable relation to the powers conferred by that act. *Phillips v. Township Council, etc., Teaneck*, 120 N.J.L. 45, 48, 193 A. 368, affirmed 122 N.J.L. 485, 5 A. 2d 698. Restrictions imposed pursuant to the zoning act must tend at least in some degree to promote the public good; they must bear a 'substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense'. *Nectow v. City of Cambridge*, 277 U.S. 183, 48 S. Ct. 447, 448, 72 L.Ed. 842; *Gabrielson v. Borough of Glen Ridge*, 13

N.J. Misc. 142, 176 A. 676; Phillips v. Township Council, etc., Teaneck, supra; Phillips Oil Co. v. Municipal Council, etc., Clifton, 120 N.J.L. 13, 197 A. 730; 179 Duncan Avenue Corp. v. Board of Adjustment of Jersey City, 122 N.J.L. 292, 5 A. 2d 68; Spur Distributing Co., Inc. v. City Council of City of Bridgeton, 122 N.J.L. 460, 6 A. 2d 192. Cf. Resciniti v. Board of Commissioners, Belleville, 117 N.J.L. 1, 186 A. 439; Watchung Lake, Inc. v. Mobus, 119 N.J.L. 272, 196 A. 223.

"Thus while our legislature has unquestionably given municipalities the right to pass ordinances 'to regulate and restrict the height, number of stories, and sizes of buildings', such ordinances to be valid must be designed to promote public health, safety, and general welfare. R.S. 40:55-30, N.J.S.A. 40:55-30. The mere power to enact an ordinance such as the one here involved does not carry with it the right arbitrarily or capriciously to deprive a person of the legitimate use of his property.

"We fail to see, in the case before us, how the ordinance in question promotes public health, safety and the general welfare. Cf. Durkin Lumber Co. v. Fitzsimmons, 106 N.J.L. 183, 147 A. 555. The Town's fire chief, chief of police, health officer and building inspector all testified that a house built 26 feet above the foundation did not promote public health, safety or general welfare more than a house built only 21 feet above the foundation.

"Respondents contend that the ordinance is justified by reason of the fact that the presence of a building less than 26 feet in height causes a depreciation in the value of surrounding property, when that surrounding property is at least 26 feet in height . . . No person under the zoning power can legally be deprived of his right to build a house on his land merely because the cost of that house is less than the cost of his neighbor's house."

ZONING

(Otto, et al v. Steinhilber, Court of Appeals of New York, 24 N.E. 2d. 851.)

One desiring variance of zoning law must prove other facts besides one's own personal hardship which might exist.

HOLC and other residential property owners in a residential zone in the village of Lynbrook, New York, resisted the application of another property owner to the Board of Appeals to grant a variation in the application of the zoning laws so as to permit him to construct

and operate a skating rink on his property which was situated partly in a business area and partly in a residential area. The applicant's property fronted on Merrick Road and extended backwardly therefrom more than four hundred feet. The first one hundred and fifty feet from Merrick Road was in a business area and the balance was in a residential area. The proposed rink was to extend backwardly from Merrick Road a distance of four hundred thirty-four feet, so that the rear two hundred eighty-four feet would be in the residential area. The application was based upon the ground of unnecessary hardship. When the case reached the Court of Appeals of New York, that court denied the application for variation and refused to permit the construction of the rink because the applicant had failed to show that (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality.

ZONING - CRIMINAL LIABILITY

(People v. Giorgi, Westchester County Court, 16 N.Y.S. 2d 923.)

Criminal proceedings may be resorted to against a person violating a village zoning ordinance. A municipality has the power to determine for itself what plans are necessary to promote the public welfare and the courts will not interfere with this legislative privilege, except in rare instances.

The defendant was convicted of disorderly conduct for violating the provisions of a zoning ordinance. He was charged with allowing premises owned by him in a residential "A" district to be used for a prohibited purpose, namely for the manufacture and sale of cement blocks. He contended that he had a lawful and vested right to use the premises in this manner by virtue of a non-conforming use enjoyed by his predecessor in title. He urged that incompetent evidence was received as to the question of the non-conforming use and also attacked the constitutionality of the ordinance as unreasonable and confiscatory. He further urged that the matter should not, in any event, have been made the subject of a criminal prosecution.

The court said that it was unfortunate that criminal proceedings had been invoked when the matter could have been settled by an

injunction but it went on to say: "That criminal proceedings are authorized and may be resorted to is beyond question. Sec. 93 Village Law; Sec. 15 Rye Zoning Ordinance; Smith Zoning Law and Practice, page 275; People v. Ward, 146 Misc. 606, 263 N.Y.S. 511. Had the defendant made an application for a variance, it is possible that the criminal prosecution would have been averted, but it does not appear that he ever made such an application. On the other hand, the failure of the Village to take action in the past is of no avail to defendant. It has been held that such failure does not constitute a defense when later proceedings are brought to enforce provisions of the ordinance. Village of North Pelham v. Ohliger, 216 App. Div. 728, 214 N.Y.S. 253, affirmed 245 N.Y. 593, 157 N.E. 871."

In reference to the defense of the non-conforming use, the evidence showed that in prior years the premises were used by the defendant's predecessor for uses incidental to the business of general contracting. In this regard the court said:

"It is well settled that a use in existence prior to the adoption of an ordinance may be continued. The difficulty in the present case is that defendant has introduced new and different uses. Certainly, uses incident to the business of general contracting are entirely different from those directly flowing from the specialized business of manufacturing cement blocks. Necessarily, such manufacturing requires the use of machines and chemicals, and constitutes a complete departure from the original use. Where such a change results in an extension and enlargement of the non-conforming use, it becomes unlawful. Pisicchio v. Board of Appeals of Village of Freeport, 165 Misc. 156, 300 N.Y.S. 368; Kensington Realty Holding Corporation v. Jersey City, 118 N.J.L. 114, 191 A. 787; Home Fuel Oil Co. v. Borough of Glen Rock, 118 N.J.L. 340; 192 A. 516; De Vito v. Pearsall, 115 N.J.L. 323, 180 A. 202. For the purpose of showing that the manufacturing use could never have had a valid inception, the State introduced into evidence two prior ordinances under both of which such a use was unlawful. This proof was most pertinent to the very offense charged. No error was committed in its reception."

The court further found, as to the defense of the constitutionality of the ordinance, that there was no abuse of discretion, discrimination or bad faith in the zoning of the property and that "A municipality has the power to determine for itself what plans are necessary to promote the public welfare, and the courts will not interfere with this legislative privilege, except in rare instances. Wulfsohn v. Burden, 241 N.Y. 288; 150 N.E. 120; 43 A.L.R. 651; Fox Meadow Estates v. Culley, 233 App. Div. 250, 252 N.Y.S. 178, Village of

Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016; Zahn v. Board of Public Works of City of Los Angeles, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074; Goldenberg v. Walsh, 242 N.Y. 576; 152 N.E. 434, decided on dissenting opinion below, 215 App. Div. 396, 213 N.Y.S. 578. The ordinance is a proper enactment and is valid. The defendant is not vested with such a non-conforming use as would permit him to operate a cement block manufacturing plant in the restricted area."

ADMINISTRATIVE ORDERS, REGULATIONS and OPINIONS

TAXATION - FEDERAL TAX LIEN

(I. T. 3347, Feb. 5, 1940. 8 U.S. Law Week 259.)

Federal tax lien is superior to rights of mortgagees under assignment of rents made subsequent to recordation of tax lien.

Federal tax lien is superior to rights of mortgagees, under mortgage executed prior to recordation of Federal tax lien, to rents from mortgaged real estate which were assigned to the mortgagees to be applied to back interest on the mortgage, subsequent to the recordation of the tax lien.

Even though the mortgage was recorded before the filing of the Federal notice of tax lien, the lien of the mortgage applied only to the real estate and not to the rents and profits.

The rule is stated in Tiffany's Real Property, volume 3, second edition, Section 613, as follows: "A mortgagor who is in possession of the land is entitled to receive and apply to his own use the rents and profits of the land; and this is so, even when the mortgage expressly includes rents and profits." It has been applied in Gillman v. Illinois & Mississippi Telephone Co., 91 U.S. 603; Freedman's Saving & Trust Co. v. Shepherd, 127 U.S. 494; and Elmore v. Symonds, 183 Mass. 321, 67 N.E. 314.

"The same general rule that a mortgagee acquires no right to the rents of mortgaged property, even by an assignment of rents in the mortgage, in the absence of entry and possession and/or the securing of the appointment of a receiver of the rents and profits in his behalf under the mortgage, has been applied by the New York courts and appears to be the accepted rule in that state. (New York Life Insurance Co. v. Fulton Development Corporation, 265 N.Y. 348, 193 N.E. 169; Women's Hospital v. Sixty-Seventh Street Realty Co., Inc., 240 App. Div. 33, 268 N.Y. Supp. 725; Dime Savings Bank of Brooklyn v. Fox, 147 Misc. 24, 264 N.Y. Supp. 262; One Hundred Forty-Eight Realty Co., Inc. v. Conrad et al., 125 Misc. 142, 210 N.Y. Supp. 400; Rhinelander v. Richards, 184 App. Div. 67, 171 N.Y. Supp. 436; Conley v. Fine, 181 App. Div. 675, 169 N.Y. Supp. 162; Sullivan

v. Rosson, 223 N.Y. 217, 119 N.E. 405; Harris v. Lesster et al., 35 App. Div. 462, 54 N.Y. Supp. 864 appeal dismissed in 159 N.Y. 533, 53 N.E. 1126.

"The foregoing cases disclose that certain qualifications upon the general rule have been recognized by the New York courts, as where there is an absolute and unqualified assignment of rents incorporated in or separate from the mortgage clearly intended to operate in praesenti or immediately upon default, or where a prior mortgagee takes an assignment of rents after default and before a subsequent mortgagee takes steps to recover them, but the facts submitted in the present case do not bring it within the application of any of the adjudicated qualifications to the usual rule. In Conley v. Fine, supra, the court said 'it is axiomatic that the assignee of a nonnegotiable chose in action can obtain no greater right than his assignor had'; and in the present case a Federal statutory lien had attached to the leases and to the assignor's (taxpayer's) right to the rents under them before the execution of the assignment to the mortgagees.

"In the instant case, by the filing of its notice of tax lien in 1932, the Government acquired a lien 'upon all property and rights to property, whether real or personal, belonging to such person', that is, belonging to A (Sec. 3186, R.S., as amended; now Sec. 3670 to 3677, inclusive, Internal Revenue Code). At the time the Government acquired its lien, the mortgagees appear to have had no legal claim or preference of any kind to the rents of the mortgaged property, for there seems to have been no legally recognizable appropriation of the rents to them, and when they did take an assignment of the rents on Feb. 1, 1939, they necessarily took that assignment subject to the Government's prior lien. Such lien therefore attached to all contracts or leases for the payment of rent to A, and to his right to receive rent thereunder, and the collector could have distrained and levied thereon to secure liquidation of the unsatisfied tax liability. (Sec. 3187 and 3188, R.S., as amended; now Sec. 3690, 3691, and 3692, Internal Revenue Code.) A subsequent assignment by the mortgagor to the mortgagees of the contracts or leases for rent would clearly have been inferior to the Government's prior lien thereon for taxes, and, a fortiori, a subsequent assignment of rents could stand in no better position.

"The assignment was merely a transfer of rents subject to existing equities or liens without otherwise affecting the mortgagor's possession of the property and his right in and to the property prior to actual entry and taking over of possession by the mortgagees. It has been held that a lien for taxes is superior to a mortgage or deed of trust executed subsequent to a demand for payment and embraces

every species of property subject to ownership. (Blacklock v. United States, 208 U.S. 75.) It follows that a lien for taxes is superior to a subsequent assignment of leases or rents."

TAXATION - SOCIAL SECURITY TAXES

(A & C-Min. Coll. No. 5003, Jan. 27, 1940. 8 U. S. Law Week 223.)

Exemption of banks and related organizations from social security taxes as Federal instrumentalities.

Social security taxes are applicable with respect to services performed after Jan. 1, 1940, in the employ of national banks, state banks which are members of the Federal Reserve System, joint stock land banks, and members of the FHLB System, under Section 1426 (b) (6) of the Federal Insurance Contributions Act and Section 1607 (c) (6) of the Federal Unemployment Tax Act, both as amended by the Social Security Act Amendments of 1939.

The Social Security Act Amendments of 1939 limit the exemption from taxes on services performed in the employ of an instrumentality of the United States to services performed for instrumentalities which (a) are wholly owned by the United States or (b) exempt from the tax by virtue of any other provision of law.

Services performed on or after January 1, 1940, in the employ of the following banks or related organizations are exempt from the employment taxes because of specific provision in statutes relating to the organizations exempting them from taxation: Federal Reserve Banks, Federal Land Banks, National Farm Loan Associations, Federal Farm Mortgage Corporations, Federal Intermediate Credit Banks, Production Credit Corporations, Production Credit Associations, Regional Banks for Cooperatives, Central Banks for Cooperatives, Federal Home Loan Banks, Home Owners' Loan Corporation, Federal Savings and Loan Insurance Corporation, and Federal Credit Unions. The employment taxes are inapplicable with respect to services performed on or after Jan. 1, 1940, in the employ of Regional Agricultural Credit Corporations in view of the fact that stock of the corporations is owned by the Reconstruction Finance Corporation.

Primary consideration is given to statutory provisions regarding the capital shares of an instrumentality in determining whether it is wholly owned by the United States, since it is axiomatic that the stockholders are the owners of the corporation. The determination

that an instrumentality is exempt from employment taxes "by virtue of any other provision of law" depends upon specific language to that effect.

National banks, state banks which are members of the Federal Reserve System, joint stock land banks and members of the FHLB System are subject to the employment taxes, after Jan. 1, 1940, since none of the organizations are wholly or partly owned by the United States, nor are any of the organizations exempt from the employment taxes by a provision of law.

The following rulings published by the Bureau in regard to the exemption of organizations as instrumentalities of the United States prior to Jan. 1, 1940, are accordingly modified; S.S.T. 16 (3 LW 1209, national banks); S.S.T. 44 (4 LW 139, state banks which are members of Federal Reserve System); S.S.T. 61 (4 LW 553, joint stock land banks, Federal Land Banks, National Farm Loan Associations, Federal Farm Mortgage Corporations, Federal Intermediate Credit Banks, Production Credit Corporations, Production Credit Associations, Regional Banks for Cooperatives, Central Banks for Cooperatives, and Regional Agricultural Credit Corporations); S.S.T. 62 (4 LW 553, Federal Home Loan Banks, Home Owners' Loan Corporation and Federal Savings and Loan Insurance Corporation); S.S.T. 109 (4 LW 811, members of the Federal Home Loan Bank System); and S.S.T. 140 (4 LW 1120, Federal Credit Unions). Mimeograph Coll. No. 4621 (4 LW 1360 is likewise modified to accord with the foregoing.)

Other rules, regulations and administrative orders affecting housing construction or finance agencies are as follows:

CIVIL SERVICE COMMISSION published a notice of the condition of the apportionment at the close of business on January 31, 1939. See 5 Fed. Reg. 614.

Published a notice of the condition of the apportionment at the close of business on February 15. See 5 Fed. Reg. 721.

Published a notice of the condition of the apportionment at the close of business February 29. See 5 Fed. Reg. 878.

FARM CREDIT ADMINISTRATION: The Secretary of Agriculture, by order filed February 20, authorized certain officials to perform the duties and exercise the functions of the Governor of the FCA in his absence. See 5 Fed. Reg. 735.

The Cooperative Bank Commissioner, by order filed February 27, rescinded section 71.15 of Title 6, Code of Federal Regulations, entitled "Loans for Refinancing Certificates of Indebtedness and Preferred Stock." See 5 Fed. Reg. 805.

The FLB of Columbia, by order filed February 14, amended the Code of Federal Regulations to abolish the requirement of a reamortization fee. See 5 Fed. Reg. 672.

FEDERAL HOME LOAN BANK BOARD:

Federal Savings and Loan Insurance Corporation: The FHLBB, by resolution filed February 2, prescribed that a Federal association, within six months of receipt of report of examination of such association, inspect and appraise the real estate securing each loan listed in the report of examination of such association, inspect and appraise the real estate securing each loan listed in the report of examination of such association as subject to comment or criticism. See 5 Fed. Reg. 597.

The FHLBB adopted resolutions, filed February 14: (1) directing the Chief Examiner to instruct that, pending proposed changes in the Rules and Regulations, appraisals of real estate be made on the basis of realistic market values; (2) interpreting the words "active political office" and "compensation" as used in 24 Code of Federal Regulations, chapter I, part 2, section 24; (3) approved a basis for charging an association for the expenses of examination; (4) authorized the Governor or Deputy Governor of the FHLB System to approve applications by institutions for the privilege of voluntarily retiring any investment by the Secretary of the Treasury or HOLC; (5) authorized Federal Savings and Loan Associations operating under Charter K to continue to issue membership certificates on the form used prior to July 26, 1937, until the supply of such forms is exhausted; (6) prescribed a new wording for association forms which are applicable to co-tenancies with right of survivorship; and (7) approved an acceptable form of fidelity bond for use by FSLAs. See 5 Fed. Reg. 689-91.

The FHLBB, by resolution filed February 21, provided for notice to creditors of a FSLA in receivership and for disallowance of claims not presented. See 5 Fed. Reg. 745.

The Board of Trustees of the FSLIC, by resolution filed February 2, amended the Rules and Regulations for the insurance of accounts to prescribe for inspection and appraisal of real estate which was commented on in the report of examination of an association. See 5 Fed. Reg. 598.

The Board of Trustees of the FSLIC, by resolutions filed February 14, (1) required eligibility examinations of all applicants for insurance of accounts; (2) directed the Chief Examiner to instruct that, pending proposed changes in the Rules and Regulations, appraisals be made on the basis of realistic market values; (3) established an admission fee for any applicant for insurance of accounts of 4 cents per \$100 of the total amount of all insurable accounts, plus all obligations to creditors; (4) determined to approve only those applicants who will not charge unreasonable interest rates; (5) approved an acceptable form of fidelity bond for use by any insured institution; (6) prescribed the additional premium to be charged an insured applicant which purchases the bulk assets of another institution. See 5 Fed. Reg. 691-693.

The Board of Trustees, by resolution filed February 17, provided that the Corporation could waive certain requirements regarding provisions appearing in long-form membership certificates. See 5 Fed. Reg. 711.

Home Owners' Loan Corporation: The FHLBB by resolutions filed February 9: (1) forbade officers or employees of the Corporation from purchasing property on which the Corporation holds a mortgage or sales instrument without the approval of the Board; and (2) authorized the General Manager to execute bond or indemnity agreements with the approval of the General Counsel to third parties in certain prescribed cases. See 5 Fed. Reg. 646.

The FHLBB, by resolution filed February 2, authorized the Regional Counsel to transmit abstracts, title policies, etc., where necessary in connection with a sale of Corporation property. See 5 Fed. Reg. 598.

The General Manager and General Counsel of HOLC, by orders filed February 9, promulgated procedures for: (1) board approval of purchases by an employee of property on which the Corporation holds a loan or sales instrument; (2) for the execution to prospective purchasers of indemnity agreements or warranties against loss from title defects; and (3) for the closing of extensions. See 5 Fed. Reg. 645-7.

RURAL ELECTRIFICATION ADMINISTRATION: The Acting Administrator, by notice filed February 21, allocated funds to certain designated projects in Indiana, Minnesota, Mississippi, Pennsylvania and Wisconsin. See 5 Fed. Reg. 735.

The Acting Administrator, by order filed February 27, amended Administrative Order No. 428, dated January 13, 1940, (5 Fed. Reg. 238) by changing the number of one of the projects designated therein. See 5 Fed. Reg. 810.

UNITED STATES HOUSING AUTHORITY: The Administrator, by regulations filed February 5, set forth certain principles and standards to be used in budgeting costs of repairs, maintenance and replacements. See 5 Fed. Reg. 598-603.

LEGISLATION

FederalFARM CREDIT ADMINISTRATION:

- H.R. 8450 - Mr. Jones (Texas) Feb. 13, 1940 to Comm. on Agriculture. Makes permanent the present $3\frac{1}{2}\%$ interest rate on loans made through national farm loan associations or Federal land banks and the 4% rate on loans of the Land Bank Commissioner amending U.S.C. supp. IV, 12: 771, 1016 (i) 7.
- H.R. 8586 - Mr. Wheelchel Feb. 21, 1940 to Comm. on Agriculture. Makes permanent the present $3\frac{1}{2}\%$ interest rate on loans made through national farm loan associations or Federal land banks and the 4% rate on loans of the Land Bank Commissioner amending U.S.C. Supp. IV, 12: 771, 1016 (i) 7.

FEDERAL HOUSING ADMINISTRATION:

- S. 3416 - Mr. Andrews Feb. 22, 1940 to Comm. on Banking and Currency. Authorizes the FH Administrator to insure (up to 20%) banks, finance companies, etc., against losses on loans made, after enactment of this act and prior to July 1, 1942, to property owners and lessees for the purchase of equipment for the protection of growing crops against adverse weather conditions and the cost of irrigation and drainage equipment and wells in connection with agricultural, horticultural and floricultural activities whose products have an established commercial market. No insurance shall be granted on loans over \$6,000. Increases from \$100,000,000 to \$150,000,000 the total liability which the Administrator may have outstanding at any one time for the insurance of financial institutions amending U.S.C. 12: ch. 13 7.

HOME OWNERS' LOAN CORPORATION:

- S. 3370 - Mr. Barbour Feb. 15, 1940 to Comm. on Banking and Currency.
Provides a 2-year moratorium on foreclosures of HOLC mortgages, provided the mortgagor pays interest, taxes, and other assessments.
- S. 3371 - Mr. Barbour Feb. 15, 1940 to Comm. on Banking and Currency.
Reduces from 5 to 3% the interest rate on loans made under Sec. 4(d) of the HOLAct [U.S.C. 12, 1663(d)].
- S. 3372 - Mr. Barbour Feb. 15, 1940 to Comm. on Banking and Currency.
Home Loan Interest Reduction Act--
Limits the interest rate chargeable, after this enactment, on home mortgage loans made by members and nonmember borrowers of FHLBanks to a rate not in excess of 2% of the rate paid by them for loans from such banks [amending U.S.C. 12: 1425]. Limits the interest rate chargeable, after this enactment, on advances made by FHLBanks to members and nonmember borrowers to a rate not in excess of 1/2 of 1% of the average rate paid on obligations issued by such banks during the 5 years immediately preceding the advances [amending U.S.C. 12: 1430]. Directs the HOLC to reduce to 3% the rate of interest on its outstanding loan balances secured by home mortgages or other liens upon real estate. Prohibits, 90 days after this enactment, the insurance under the National Housing Act of any mortgage loan bearing interest in excess of 4% per annum on unpaid balances.
- H.R. 8447 - Mr. Fitzpatrick Feb. 13, 1940 to Comm. on Banking and Currency.
Reduces from 5 to 4% the interest rate on loans made under sec. 4(d) of the HOLAct [U.S.C. 12: 1463(d)].

StateBANKING

Kentucky: S. 209

Introduced by Mr. Stahr.

To provide that bonds and other obligations issued by a housing commission, pursuant to the Municipal Housing Commission Act or the Rural Housing Commission Act, when secured by annual contributions to be paid by the United States Government, shall be security for public deposits and negotiable and legal investments for the commonwealth, political subdivisions, banks, building and loan associations, investment companies, etc.

HOUSING

California: A.B. 57 (Spec. Sess.) To create a California Housing Authority for the purpose of under-

taking slum clearance and projects to provide dwelling accommodations for persons of low income. The powers and duties of the Authority are set forth in detail including the acquisition of property, borrowing money, issuing bonds, and other obligations, and giving security therefor. The property and securities of the Authority are exempt from taxation and assessments, but the Authority is authorized to make certain payments in lieu of such taxation.

Kentucky: S. 211

Introduced by Mr. Stahr.

To authorize County Housing Commissions and Regional Housing Commissions to purchase, construct and operate low cost housing projects in rural areas.

S. 212

Introduced by Mr. Stahr.

To authorize cities, towns, villages, counties, and other public bodies to aid housing projects by furnishing parks, playgrounds, streets, municipal facilities and other lands.

HOUSING (contd.)

Kentucky (contd.) S. 213

Introduced by Mr. Stahr.

To validate and legalize the creation and establishment of Municipal Housing Commissions, and all bonds, contracts and acts of such commissions. These are all declared legal, notwithstanding any want of statutory authority or defect or irregularity therein.

S. 214

Introduced by Mr. Stahr.

To amend the acts relating to Municipal Housing Commissions, to clarify the definition of housing projects and bonds. The amendment also requires that housing projects shall not be operated for profit, and that dwelling accommodations shall be available only to persons of low income, and that rentals shall be within the financial reach of such persons of low income.

Mississippi: S.B. 92

Referred to Judiciary Committee, Feb. 1.

This bill declares valid and legal the establishment and organization of Housing Authorities, all bonds, notes, contracts, agreements, obligations and undertakings of such Housing Authorities, and all proceedings, acts and things heretofore undertaken.

Comment: Favorable action expected as soon as Administration measures of the new Governor have been considered.

S.B. 93

Referred to Judiciary Committee, Feb. 1.

This bill authorizes the investment of trust funds in USHA securities and the formation of regional Housing Authorities by two or more counties to provide rural housing.

Comment: Favorable action expected as soon as Administration measures of the new Governor have been considered.

HOUSING (contd.)

Mississippi (contd.) H.C.R. 14.

Not referred.

Memorializes Congress to make available funds for rural housing.

New York: H.B. 656.

Introduced by Mr. Gans.

To amend the Civil Practice Act by adding two new sections for the purpose of limiting the actions and summary proceedings to recover possession of dwellings. The amendment is designed primarily to prohibit, during the housing emergency, the removal of tenants for the purpose of securing new leases at higher rental rates. Procedures are established for removal of tenants by landlords in good faith and for just cause.

H.B. 729

(Introduced by Mr. Goldberg.

A.B. 1745

(Introduced by Mr. Schwartz.

To amend the multiple dwelling law to prohibit the occupancy of basements or cellars for living purposes, unless the department charged with the enforcement of the law issues a permit therefor. Standards are prescribed for the guidance of the department in issuing such permits.

S. 1051

Introduced by Mr. Pack.

Prohibits the enforcement of certain provisions of leases as against public policy: expenditures of money by the tenant to comply with the requirements of law or of governmental or other authorities; a provision in a lease which makes the landlord the sole judge of any facts in which the tenant's right of occupancy or the tenant's obligations to the landlord may depend is contrary to public policy and void; provisions accelerating the obligation to pay rent. Other provisions declared void are, requiring the tenant to submit to arbitration in a dispute before an organization of which the landlord is represented and the tenant is not; payment of attorney's fees by the tenant whether the landlord is successful in any action against the tenant or not.

HOUSING (contd.)

New York (contd.) S. 1507

Introduced by Mr. Quinn.

To fix the maximum rents for low cost dwelling units during an emergency which is declared to exist.

Under this Act, no proceeding could be brought to remove a tenant occupying low rent premises except in good faith for just cause. The bill also provides that tenant could not be removed for failure to pay rent where such rent exceeds the amount charged for a stated period of September 30, 1938, to March 1, 1939.

MORTGAGE MORATORIA

New York: H.B. 964

(Introduced by Mr. Fitzpatrick.

S. 1563

(Introduced by Mr. Coughlin.

To amend the Civil Practice Act relative to mortgage foreclosures. The mortgage moratorium on mortgages made during a certain specified period is to be extended until July 1, 1941.

REHABILITATION

New York: S. 1590

(Introduced by Mr. Nunan.

A. 1844

(Introduced by Mr. Mitchell.

To establish redevelopment corporations, to formulate, obtain approval of, and put into effect a development plan for the purpose of the reconstruction of substandard and unsanitary areas in cities. All plans developed by the corporation must be approved by the planning commission. The local legislative body is authorized to exempt redevelopment corporations from all or any part of taxes upon payment of sums in lieu thereof. Procedures are prescribed for issuing stock, acquisition of real property, and the sale, mortgage or lease of any property so acquired.

LEGAL COMMENT

LEGAL BASIS FOR THE RECOVERY OF LOANS MADE BY GOVERNMENT AGENCIES. E. E. Naylor, Asst. to the Commissioner of Accounts and Deposits, United States Treasury Department. 26 Virginia Law Review, Jan. 1940, p. 302-325.

Since the depression there has been considerable activity in the banking and credit field by the Federal Government. Some of the activity has been in the form of insuring loans and deposits, while a large portion has been in the form of actually making loans. Extensive use of corporations has been used as a means of exercising Federal powers and functions. In considering the rights and privileges of the United States Government in the matter of the recovery of loans made and debts due, it is also necessary to consider the rights and privileges of the government corporations and whether or not the rights, privileges and immunities of sovereignty apply to these corporations.

The principal lending agencies of the government engaged in banking and credit activities, in the field of agriculture, many of which have been set up in corporate form, are the Federal Land Banks, Joint Stock Land Banks, Federal Intermediate Credit Banks, National Agriculture Credit Corporations, Regional Agricultural Credit Corporations, Central Bank for Co-operatives, Regional Banks for Co-operatives, Production Credit Associations, Federal Crop Insurance Corporation, Federal Farm Mortgage Corporations and the Farm Security Administration. The principal Federal agencies and corporations which have been engaged in banking and credit activities, by direct lending operations or by insuring loans and deposits, in fields other than agricultural, are the War Finance Corporation, Reconstruction Finance Corporation, Federal Home Loan Bank Board, Home Owners' Loan Corporation, Federal Savings and Loan Associations, Federal Deposit Insurance Corporation, Electric Home and Farm Authority, Federal Savings and Loan Insurance Corporation, National Mortgage Associations, Federal Credit Unions, Export-Import Bank of Washington and The RFC Mortgage Company.

Congress is acting within its constitutional grant of power in creating corporations and although the lending and insurance activities may be novel, yet the corporate form, as such, for carrying out

governmental functions is not new. So long as a corporation is "necessary" or "proper" for the execution of one of the enumerated powers, it will be held a valid Congressional creation. Thus, acting in conformity with the power to tax, borrow and expend public money for the general welfare, Congress passed the HOLC Act of 1933. The HOLC has been one of the most active of the corporations empowered by the government and has frequently been involved in law suits in which the basic question was whether government corporations have the rights, privileges and immunities of the sovereign government, or whether the rights, privileges and immunities of government corporations are only the same as those of private corporations. Both as to tort actions and contract actions the HOLC has been held not immune to suit, unless it appears that the suit would constitute a direct interference with its functions as a Federal instrumentality, not only for legal reasons but also because of a provision in the enacting law that it might be sued. Similarly, in enacting the laws creating thirty-nine other corporations within the past two decades, Congress has uniformly included amenability to law and without exception included the authority to sue and be sued.

The question now to be considered is whether the recovery of such loans and grants is subject to laws which govern the recovery of money by private individuals or corporations. It is not difficult to see that mistakes will be made by the agents of the government in granting loans, payments for services rendered, supplies furnished, etc. Such erroneous payments represent losses to the government unless recovery can be had from the recipient of the erroneous payment or the erring agent, and the attempts to recover money erroneously paid to a third party through a mistake have been the source of many controversies by the Federal Government.

Recovery of public funds which have been wrongfully or erroneously or illegally disbursed may be made by appropriate action. Voluntary payments made by officers of the United States under mistake of law are exceptions to the general rule that money paid under mistake of law cannot be recovered, and so also if the payment was made under mistake of fact, unless the payment was paid pursuant to a specific appropriation of Congress. Similarly, money obtained from the United States through fraud may be recovered. The United States, however, is subject to the same equitable rules as other litigants when endeavoring to recover money paid under mistake of fact. Accordingly, if the defendant has lost his remedy against a third party because of the failure on the part of the government to give timely notice of the discovery of the mistake, the government will lose its right to recover, although under ordinary circumstances the government's right to recover funds paid by mistake is not barred by the passage of time, unless it is

clearly manifested that Congress intended to raise a statutory barrier to this.

The government must show that the funds it is attempting to collect belong to it. Priority is established by statute in the cases of debts due by bankrupts. However, this priority is to general creditors only, and not to preferred creditors. Government corporations share this priority privilege of the United States.

In regards to state statutes of limitations they do not bar an action by the United States whether the suit be in a state or Federal court. Counterclaims may not be set up by the defendant unless he can show that the claim has been presented to the accounting officers of the Treasury and disallowed by them. Some exceptions to this rule are permitted. Set-offs are permitted, but no affirmative action is permitted if the set-off exceeds the amount claimed by the government.

THE TAX TANGLE. Reprinted from Freehold, Vol. 6-No. 3.
February 1, 1940.

In general the effort to tax capital values of real estate has gone very far astray. In Boston during the first six months of last year the first seven hundred sales of property were made at a figure which averaged 49% of the assessor's valuation. A commission in New York has estimated that the property on Manhattan is assessed 120% of its present marked value. Most cities can report such situations for at least a large part of their real estate.

Our own view is that since capital value is necessarily an estimate of future utility, we must shift the ground of taxation completely and tax the income or current utility of real estate instead. We see no other way in which it can be taxed fairly. This is, in essence, the British system, which our own investigations show is quite satisfactory. In several visits to England, we have never heard a single person, either a property owner or a real estate man, criticize the British system as being unfair in principle. On the other hand, we have never heard a single man in this country who knew anything about the subject state that our property tax is fair.

In connection with any Federal study of the subject, we are interested in Federal action which will recognize the peculiar place that real property holds in the financing of local government. At present there is no real recognition of this fact. The owner of real

estate not only pays his local taxes, but he pays his state income tax and also the Federal income taxes, together with most other taxes. The owner of intangibles is in a very different position. Certainly in the interest of society as a whole and in the interest of home ownership, the owners of real property and the owners of intangibles should be put on a parity in the tax system.

We suggest that this can be done by giving the owner of real estate credit on his state and Federal taxes for the local taxes he has paid on his real estate. By credit, we mean an offset and not merely the privilege of including real estate taxes as an item of expense in operating his property, because that gives him very little relief.

There's no doubt that the present triple tax load of local, state and Federal taxes on the ownership of real estate is one of the most serious obstacles to the rebuilding of our cities and to recovery of the construction industry. There are a great many men of means today who refuse to invest in real estate in any way, because of the tax load, who say that they are better off to keep their money in government securities. No doubt the Federal bond market gained by this procedure but the country as a whole and its economic system suffer.

One of our principal difficulties today in the tax field is that each unit of government goes ahead merrily on its way developing its own tax system, each based on different assumptions. When those who are treated unjustly seek a remedy, they usually go from one unit of government to another and fail of results.

If Congress itself would have the courage to attack the problem, there might be some hope. The Temporary National Economic Committee could conceivably recommend the creation of a joint congressional commission with adequate funds to go into the whole question and to work out a series of recommendations for Federal, state, and local taxing units. There might be some chance of action through this effort.

ONE STATE'S ATTACK ON FORECLOSURE COST. Frederick V. Goess, Pres., The Mortgage Conference of New York; Vice Pres., Manufacturers Trust Co., N.Y.C. Insured Mortgage Portfolio, Feb. 1940.

Nearly every mortgage lender is keenly aware today of the need for revision and modernization of mortgage-foreclosure procedures. The analysis of foreclosure costs in the various states, made by the HOLC

some months ago, brought out the facts of the situation clearly and emphasized the need for finding a solution of the problem.

That report's revelation that foreclosure costs in New York State were among the highest in the Nation, and that our procedure was cumbersome and out-of-date, was not exactly news to New York mortgage lenders.

We in New York have been following the efforts, in which FHA officials have taken a leading part, to obtain approval of the Conference of Commissioners on Uniform State Laws and of the American Bar Association of a model uniform mortgage and foreclosure act. The active interest and support of the various government agencies concerned with housing is encouraging to all interested in better mortgage laws.

In New York we feel we have a pressing problem that needs remedial legislation as soon as we can get it.

Our attorneys are now required to serve each defendant personally. This is often a long and expensive process. We believe that those having the principal direct interest in the property, such as the owners and junior mortgagees, should have personal service. The difficulty, often, is not in serving them. It is in locating and identifying judgment creditors, who are not required by our present laws to keep an address up to date in the public records or to refile their liens, as are, for example, holders of mechanics' liens or conditional bills of sale.

What we propose is simply that our attorneys be allowed to serve judgment creditors by mail, as has been done in other legal proceedings. That this will effect a considerable saving, in itself, we know from our own records.

Under the New York law a receiver is entitled to a commission of 5 per cent of the total receipts from the property. When an agent is appointed, it is customary to pay him another 5 per cent of the receipts, and, while the compensation of the receiver's attorney is not fixed, it was found by the committee's analysis that receivers' attorneys were receiving in practice just under another 5 per cent of income.

Literally millions of dollars will be saved by our proposal that the plaintiff serve without compensation under bond, in cases where, in the opinion of the court, the plaintiff is qualified to serve and requests appointment.

Our third proposal is to eliminate the empty mummery of a formal, advertised, legal sale except in cases where a sale is justified by the possibility that an equity exists. This would be done by replacing the present public-sale requirements in the law with a provision stating that the judgment of foreclosure itself conveys title.

A staggering amount is wasted by the present cumbersome method of foreclosure in New York and any steps taken toward remedying this evil will be for the benefit of all concerned.

UNAESTHETIC SIGHTS AS NUISANCES. Dix W. Noel, Assistant Professor of Law, University of Toledo. 25 Cornell Law Quarterly, December 1939, p. 1-17.

This article brings out the fact that the aesthetic sensibilities of the public generally are increasing and that the law of nuisance should be expanded to protect this growing interest in freedom from unsightliness.

When a landowner in a pleasant locality decides to use his property for the operation of an automobile wrecking establishment, or for some other purpose considered unsightly by persons living nearby, there often arises the question of whether any legal wrong has been committed. If there has been no violation of zoning or building restrictions, then the answer depends on whether or not the property complained of constitutes a sufficient annoyance to be characterized as a "nuisance".

In the development of the law of nuisances aesthetic interests usually have been treated with slight regard, as a matter of luxury and indulgence. The tendency has been to refuse to enjoin a condition, or to allow damages unless the annoyance complained of causes some tangible discomfort as distinguished from that which depends on taste or imagination. In the case of *Houston Gas and Fuel Company v. Harlow*, 297 S.W. 570, the jury found that the erection of a large gas tank near the residence of the plaintiff had resulted in the depreciation of the market value of the plaintiff's property to the extent of two thousand dollars, and that fifty per cent of the depreciation was due not to any danger, or odor, but solely to the unsightliness of the tank. Judgment was rendered for the entire damage, but on appeal the amount was reduced to one thousand dollars. This decision is representative of a general disposition of the courts to consider that mere unsightliness is not considered an actionable wrong, even though there may have been a substantial depreciation in the value of adjacent property.

There is some indication of "a growing belief that that which is offensive to the view, an eyesore, a landscape blight, may attain such significance as to warrant equitable interposition". It has long been established that sights offensive to a sense of decency may be enjoined.

The case in which the question of aesthetic interests has, perhaps, been most carefully considered is that of Parkersburg Builders Material Company et al v. Barrack, 110 A.L.R. 1454, decided by the Supreme Court of Appeals of West Virginia in 1937, involving a suit to enjoin the use of land, enclosed by a wire fence seven or eight feet high, for the outdoor storage and wreckage of abandoned automobiles. The neighborhood was claimed to be essentially residential. In the circuit court the trial chancellor enjoined the defendant from continuing to use his property for the storage or dismantling of old cars except within an enclosed structure, and required that the wire fence be taken down. On appeal the decision was reversed by the Supreme Court, but solely on the ground that the neighborhood had not been proved to be residential. The opinion, written by Judge Maxwell is devoted principally to the support of the court's conclusion that it would have enjoined a condition such as this, on grounds of unsightliness alone, if the area had in fact been residential.

That there is no intent to empower the courts to establish an arbitrary aesthetic standard is indicated by a quotation from a decision sustaining a zoning ordinance, in which was stated by Justice Owen of Wisconsin: "The rights of property should not be sacrificed to the pleasure of an ultra-aesthetic taste. But whether they should be permitted to plague the average or dominant human sensibilities, may well be pondered". In determining what constitutes an eyesore, the test ordinarily applied is "the judgment of reasonable men", and the standard is the "normal" man.

Other cases pointing out decisions where the claims were based on aesthetic conditions are cited by the author.

The last case cited in the article is that of State ex rel Civillo v. New Orleans, 97 So. 440, which sustained the exclusion of a Piggly-Wiggly store from a residential area, wherein the court relied on the conception of nuisance to support its decision, stating: "An eyesore in the neighborhood of residences might be as much a public nuisance, and as ruinous to property values in the neighborhood generally, as a disagreeable noise, or odor, or a menace to safety or health. These decisions indicate that the conception of what constitutes a nuisance likewise is expanding to include unaesthetic sights.

In conclusion, the articles states: "Unquestionably, the aesthetic sensibilities of the public generally are increasing, and it is submitted that the time has now come when the law of nuisance should definitely be expanded to protect, in many cases, this growing interest in freedom from unsightliness."

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op. 20

· HOUSING · LEGAL DIGEST

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APRIL 1940

"In investigating the building trades, we are not dealing primarily with the criminal class of our population. We are dealing with ordinary law-abiding citizens who are caught in a vicious system which they are incapable of overturning without the aid of the Government. The presence in a city of an organization engaged in antitrust investigational work gives to those law-abiding elements in an industry an assurance that they will not be forced into illegal practices through the necessity of protecting themselves against the unlawful aggressions of others, or through fear of retaliation."

THURMAN ARNOLD, Assistant Attorney General,
DEPARTMENT OF JUSTICE

("Antitrust Law Enforcement, Past and Future" -- 7 Law and Contemporary Problems 1.)

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE
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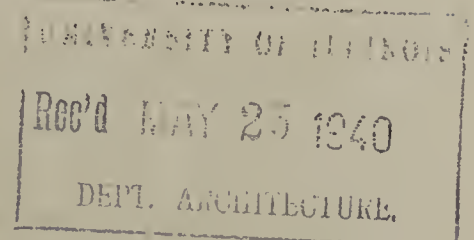
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The Editors of the HOUSING LEGAL DIGEST endeavor to present as completely and impartially as possible material relating to housing legal problems: but they assume no responsibility for opinions expressed herein and no inference may be drawn as to their agreement or disagreement with viewpoints expressed.

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DECISIONS

BANKRUPTCY - COMPOSITION AND EXTENSION

(FLB of Springfield v. Hansen, Circuit Court of Appeals, Second Circuit, 109 F 2d 139)

Where a farmer-debtor seeking composition and extension was unable to secure acceptance of proposal by requisite majority of creditors and asked to be adjudicated a bankrupt, the proceeding could not be dismissed on creditors' motion on ground that proceeding was not brought in good faith and could not bring about financial rehabilitation of the farmer.

"The question is whether the petition of a farmer seeking relief under section 75 of the Bankruptcy Act, 11 U. S. C. A. s. 203, should have been dismissed by the district court on motion of a mortgagee, on the ground that the proceeding was not brought in good faith and could not bring about the financial rehabilitation of the farmer. The district judge denied the motion to dismiss".

The FLB moved before the district judge to dismiss the proceedings on the ground that the debtor had not filed her petition in good faith and that continuance of the proceeding could not result in the debtor's rehabilitation. The supporting affidavits set forth that the debtor did not live on the farm and had received only a small sum of money from it in eight months and that at the creditors' meeting the debtor had refused to answer questions concerning plans for operating the farm in the future, and had been sustained by the referee. The district judge denied the motion, and the circuit court in upholding this ruling said:

" The view has been taken that a farmer's petition under section 75 and his amended petition under subsection(s) should be dismissed and the proceeding halted where the farmer's offer of composition or extension was not made in expectation that his creditors would accept it or where there is no reasonable chance of rehabilitation. Cowherd v. Phoenix Joint Stock Land Bank, 8 Cir., 99 F. 2d 225; In re Henderson, 5 Cir., 100 F 2d 820; Wilson v. Alliance Life Ins. Co., 5 Cir., 102 F. 2d 365; Sullivan v. Tofflemoyer, 10 Cir., 104 F 2d 835. The appellant relies on these and similar cases. They have been overruled, we take it, by John Hancock Mutual Life Ins. Co. v. Bartels, 60 S. Ct. 221, 84 L. Ed.---, decided by the Supreme Court December 4, 1939.

There the district court on motion of a mortgagee had dismissed a debtor's proceeding under section 75 and had vacated an adjudication under subsection(s), on the ground that the debtor had not made a proposal which could be construed as an offer in good faith for extension or composition, and on the further ground that there was no reasonable probability of financial rehabilitation. The dismissal was held erroneous. The Supreme Court went over the procedure called for by the various subsections of section 75 and pointed out that there was no provision for dismissal because of inadequacy of the debtor's proposal or because of lack of reasonable probability of rehabilitation. The conclusion was that the district court, instead of halting the proceeding at the outset, should have followed the procedure outlined in the statute and should have continued the administration of the estate.

"The points raised by the appellant on its motion to dismiss the proceeding were in substance the same as those discussed in the Bartels case. They furnished no basis for dismissal of the proceeding. The order of the district judge denying the motion to dismiss the proceeding will accordingly be affirmed".

BANKRUPTCY

(Zunkehr v. Steinman et al., Circuit Court of Appeals, Seventh Circuit, 108 Fed.(2d) 448).

The subsections of section 75 of the Bankruptcy Act contain no provisions for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor. There is nothing in these subsections which warrants the imputation of lack of good faith to a farmer-debtor because of that plight.

This was a proceeding in the matter of plaintiff, debtor, who filed a petition for extension and composition of her debts. The defendants who were secured creditors, opposed the petition. From an order setting aside the debtor's adjudication in bankruptcy under the Bankruptcy Act, section 75(s) and dismissing her petition because of a finding that there was no likelihood of her financial rehabilitation, the debtor appealed. The circuit court of appeals reversed the decision of the district court on the basis of the Bartels case and said:

"The judgment of the District Court must be reversed, in view of the recent decision of the Supreme Court in John Hancock Mutual Life Ins. Co. v. Bartels, 60 S. Ct. 221, 223, 84 L. Ed._____, decided December 4, 1939. The Court there said:

"The subsections of Section 75 (11 U.S.C.A. section 203) . . . contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor. Nor is there anything in these subsections which warrants the imputation of lack of good faith to a farmer-debtor because of that plight. . . .

"As Bartels' case thus fell within subsection s, he amended his petition and asked to be adjudicated a bankrupt as that subsection permits. He was so adjudicated. Bartels then asked, also as provided in subsection s, that his property be appraised, that his exemptions be set aside to him as provided by state law, and that he be allowed to retain possession of his property under the supervision of the court, that is, subject to such orders as the court might make in accordance with the statute. The court failed to take that action. Instead of having the property appraised, the court received conflicting testimony as to value, discussed the chances of the debtor's rehabilitation and dismissed the petition and all proceedings thereunder. . . . it is provided, in paragraph (3), that at the end of the three year period, or at any time before that, the debtor may pay into court the appraised value of the property of which he retains possession. . . .

"We hold that on his amended petition invoking subsection s Bartels was entitled to be adjudged a bankrupt and to have his proceeding for relief entertained and his property dealt with in accordance with that subsection."

"The instant issue is parallel with, but much stronger than that presented in the Bartels case, supra. The disposition of this appeal is therefore controlled by that decision.

"The judgment of the District Court is reversed, with directions to reinstate the bankrupt's petition under subsection(s), and to proceed in conformity with that subsection."

BANKRUPTCY - FRAZIER-LEMKE ACT

(U.S.D.C., E. Okla. In re Spencer, Feb. 16, 1940, 8 Law Week 501)

Order of dismissal which has become final is not void under rule of decision of Bartels case--

Order dismissing proceedings under Frazier-Lemke Act because there was no reasonable hope of rehabilitation, which has become final in the absence of an appeal, will not be set aside on the debtor's motion grounded on absence of jurisdiction of the court to enter the

order under the decision of the Supreme Court of the United States in *John Hancock Mutual Life Ins. Co. v. Bartels*, decided Dec. 4, 1939 (7 LW 663).

The order is not void for want of jurisdiction. It was entered before the Supreme Court rendered its decision in the *Bartels* case. Although it is the same type of order as was involved in the *Bartels* case and although the court erred in entering the order under the rule of that case, it is not void. Notwithstanding the error, the order has become final and is therefore res judicata of the questions determined by the court in issuing the order.

The order is similar to many others entered prior to the decision in the *Bartels* case. Courts generally were of the opinion that such proceedings should be dismissed in the absence of a reasonable hope of rehabilitation. Since the *Bartels* case was decided, "much speculation has arisen as to the status" of these dismissed cases. To hold that the orders of dismissal are void for want of jurisdiction would be tantamount to holding subsequent state court foreclosure proceedings likewise void for want of jurisdiction. There is nothing in the Bankruptcy Act or in the *Bartels* decision to warrant such conclusion.

BANKS - PLEDGE OF ASSETS - FUNDS OF FEDERAL GOVERNMENTAL AGENCIES

(*Inland Waterways Corp. et al. v. Young*, ___ U.S. ___, No. 6, March 25, 1940).

A national bank may pledge its assets to secure deposits of funds made by Governmental agencies, even though they may not be "public money" within the scope of the National Banking Act.

The question presented is whether a national bank may pledge assets to secure deposits of funds made by three separate Governmental agencies even though the money is not "public money" within the scope of section 45 of the National Banking Act. After the bank's insolvency a suit was instituted by the receiver for the recovery of the pledged assets or their proceeds to the extent of the amount in excess of the dividends paid to the general depositors. In reversing the decision of the Court of Appeals for the District of Columbia the Supreme Court of the United States held that a national bank may pledge its assets in the manner indicated, and said:

"Congress has necessarily been concerned from the beginning to provide appropriate safeguards for government funds. One of the motives in the establishment of the first Bank of the United States was its availability as a safe depository for such funds. They were kept there until the expiration of that Bank's charter in 1811. Thereafter and until the second Bank of the United States was chartered, government monies were kept in state banks. These deposits were without security, and as a consequence severe losses followed the financial dislocation which came with the War of 1812. This experience led the Government to exact security and losses became negligible. . . .

"By section 45 of the act, Congress specifically commanded the Secretary of the Treasury to exact security for "public monies" deposited by him in national banks. R. S. section 5153 (12 U.S.C. section 90). We read this as an exaction of duty from the Secretary as to monies subject to his control, see *Cook County Nat. Bank v. United States*, 107 U.S. 445, 449, and not as a limitation upon the power of the bank to give security when it may be required by other Government officers and agencies charged with the custody of federal funds. Placing section 45 in the setting of its history, we do not think it should be read in a niggardly spirit, as though it expressed a gingerly departure from public policy. On the contrary, it is a manifestation of historic national practice, which is to be given scope consonant with the reason for its development. Compare *Keifer & Keifer v. R. F. C.*, 306 U.S. 381. By a series of specific statutory commands, Congress has recognized the power of national banks to give security for deposits of a governmental nature by laying upon various agencies, charged with the custody of such funds, a duty to exact collateral. See section 61 of the Bankruptcy act, 30 Stat. 562; section 9 of the Postal Savings Act, 36 Stat. 816; and Acts relating to Insolvent Bank Funds, 39 Stat. 121; Porto Rican Funds, 39 Stat. 951; Government Obligations, 40 Stat. 291 and Indian Monies, 40 Stat. 591. With one exception all these special statutory requirements pertain to funds held by the Government for the benefit of others. It is difficult to suppose that what Congress has commanded with respect to funds held by its agencies in an immediate fiduciary capacity, it would deem a violation of law if done with respect to funds beneficially owned by the United States itself. What may be inimical to the private aspects of the national banking system, and therefore ultra vires, has no such relevance to the public aspect of national banks, and to the enforcement of the public interest by those charged with primary responsibility for its guardianship.

"So far as the powers of a national bank to pledge its assets are concerned, the form which Government takes--whether it appears as the Secretary of the Treasury, the Secretary of War, or the

Inland Waterways Corporation--is wholly immaterial. The motives which lead Government to clothe its activities in corporate form are entirely unrelated to the problem of safeguarding governmental deposits, and therefore irrelevant to the issue of ultra vires. Compare *Skinner & Eddy Corp. v. McCarl*, 275 U.S. 1, 8. The true nature of these modern devices for carrying out governmental functions is recognized in other legal relations when realities become decisive. Compare *Clallam County, v. United States*, 263 U.S. 341; *Emer. Fleet Corp. v. West Union*, 275 U.S. 415. The funds of these corporations are, for all practical purposes, Government funds; the losses, if losses there be, are the Government's losses. Compare *U.S. Grain Corp. v. Phillips*, 261 U.S. 106, 113..".

CONSTITUTIONAL LAW - HOUSING AUTHORITIES ACT

(The People of the State of Colorado, ex rel. Stokes v. The Commissioners of Denver Housing Authority. Opinion, decided March 25, 1940)

The Housing enabling acts of the State of Colorado were enacted pursuant to the police power of the state, pertaining to a subject of state concern and, therefore, do not violate the state constitutional provision granting power to home-rule cities to legislate on all local and municipal matters.

A quo-warranto proceeding alleged usurpation of franchises, privileges and grants by the Denver Housing Authority which sought to sell public money to acquire by grant and condemnation real estate in the City and County of Denver upon which to construct a low-rent housing project; that such project was to be exempt from taxation as property of a municipal corporation; that money was to be borrowed on such project, all to the damage and prejudice of the people of Denver. The Authority answered that it was a body politic and corporate, created by the state pursuant to the state housing enabling statutes which authorized the establishment of municipal corporations known as housing authorities.

The question involved was whether the housing legislation violated Article XX of the state Constitution in that the enactments were local and municipal in character and not of public concern with the police power of the state.

The Court pointed out that the housing enabling acts permit cities of the first class to engage in slum clearance and housing projects; to award contracts to construct such projects; to prescribe the mode of procedure for and regulation of, the issuance of bonds or

other securities, and the payment thereof; that they empower such cities to acquire land for a housing authority; to exercise the right of eminent domain; and grant certain tax exemptions.

Relators contended that under Article XX of the state Constitution, the housing legislation could only be authorized by an amendment to the City Charter under the police power delegated by said Article and that the enactment of the housing legislation was an invasion of the constitutional powers of a home-rule city. The constitutional provision referred to vested power to make, amend, and to replace the charter of a city in the inhabitants thereof, and provided that such charter shall be its organic law and extend to all its local and municipal matters. The city had not amended its charter to authorize such powers as had been granted by the state housing legislation. Relators contended, however, that pursuant to the constitutional provision the state had lost all jurisdiction over a home-rule city in matters of local and municipal concern.

The Supreme Court pointed out that there was no contention that the City Charter forbids such action as is authorized by the housing legislation and observed, but did not decide, that if slum clearance and construction of low-rent housing should be held a matter of local concern, such action is a proper exercise of the police power of the state so long as the city does not amend its charter.

The Supreme Court stated that insofar as the exercise of any power granted to the Denver Housing Authority is concerned, Article XX of the State Constitution has no application for the reason that the Authority is an independent entity, not subject to the charter of the city, and that the legislature has a right to create quasi-municipal corporations and to provide for their personnel and manner of administration in any way it sees fit.

It was further pointed out that the Denver Housing Authority is not an agency of the City and County of Denver, but a separately created quasi-municipal corporation, and that insofar as the housing legislation authorizes officials of a home-rule city to exercise any power, they are deemed to be state agencies in that there is no requirement that they function as municipal agents.

The Supreme Court held that the powers and privileges granted by the state housing enabling acts are not local and municipal in character, but are of public concern within the state police power, and, therefore, not in violation of Article XX of the state Constitution with respect to the powers of home-rule cities.

CONSTITUTIONAL LAW - TAXATION

(Franklin Soc. for Home Building & Savings v. Bennett, Court of Appeals of New York, 24 N.E. 2d 854).

The statute imposing a recording tax on mortgages is not violative of the Fourteenth Amendment and is constitutional.

The plaintiff, a savings and loan association, attempted to record four mortgages with the Register of the County of Queens, but the recording officer refused to accept the mortgages for record unless the plaintiff paid to him the amount of the "recording tax", which the legislature had attempted to impose upon each mortgage recorded after July 1, 1906. (Tax Law, sec. 253). The plaintiff claimed that under the Constitution of the State of New York and the Constitution of the United States, the tax could not lawfully be imposed. However, plaintiff paid the tax under protest and the controversy was submitted to the Appellate Division of the Third Department upon an agreed statement of facts and that court sustained the validity of the tax. The Court of Appeals also sustained the validity of the tax and said:

"In 1906 the Legislature passed a statute (Laws of 1906, ch. 532), which, the court has said, provided 'a different scheme of mortgage taxation. . . to take effect July 1st of that year, and applicable to mortgages recorded on or after that date. It prescribed a recording tax of 50 cents on each \$100 in lieu of the annual property tax prescribed by the statute of 1905.' (Italics are new.) People v. Trust Company of America, 205 N.Y. 74, 76, 98 N.E. 207. With few changes the provisions of the 1906 statute are now embodied in article XI, section 250 et seq., of the Tax Law. Lest the inducement to record offered by the Real Property Law should in some cases be nullified by reluctance to pay a recording tax, the Legislature in section 258 of the Tax Law, has provided an effective form of economic compulsion to supplement the inducement by restricting, if not, indeed, prohibiting, the use of an unrecorded mortgage for any practical purposes.

"Many of the provisions of the statute of 1906 now part of the Tax Law were contained, also, in chapter 729 of the Laws of 1905, which was supplanted by the later statutes. For the taxpayer the significant difference was that under the earlier statute the tax was payable annually; under the later statute, the tax is payable only once-at the time the mortgage is recorded. Upon payment of the tax the owner of the mortgage might secure the benefit of the recording acts. Until the tax was paid, the use of the mortgage was subject to the drastic restrictions upon its use which were imposed by the Tax Law. The 'recording tax' was unquestionably intended as a substitute for the property tax previously imposed on mortgages as a species of per-

sonal property. It has been referred to as 'a remnant of the old system of taxing personal property,' and argument has been made that with the passing of all taxes on personal property this 'remnant' of an abandoned system should be cast aside by the Legislatures. (Cf. Report of the New York State Commission for Revision of the Tax Laws, Legislative Document /1932/, vol. 18, No. 77, p. 219; Report of the Joint Legislative Commission on State Fiscal Policies, Legislative Document /1938/, No. 41, p.222). The Legislature has not been moved by such arguments. Article XI of the Tax Law is unrevoked. When the Legislature enacted the statute imposing a 'recording tax' on mortgages, the label or classification of the tax could not affect the power of the Legislature to enact it. In 1938 article XVI, entitled 'Taxation,' was added to the Constitution of the State and placed restrictions upon the taxing power exercised by the Legislature. In Section 3 of that article it was provided, among other things, that 'Intangible personal property shall not be taxed ad valorem nor shall any excise tax be levied solely because of the ownership or possession thereof, except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally.' Now the validity of the tax depends upon whether it is properly labelled or classified as a 'recording tax,' which is not levied solely, because of the ownership or possession of a mortgage, or, is, as the plaintiff maintains, an ad valorem tax on property, within the meaning of the constitutional provision.

"The substantial rights of a taxpayer are ordinarily not affected by the form of a tax or by the characterization of the tax by the Legislature or the court. 'The name by which the tax is described in the statute is, of course, immaterial. Its character must be determined by its incidents.' Dawson v. Kentucky Distilleries & Warehouse Co., 255 U.S. 288, 292, 41 S.Ct. 272, 274, 65 L.Ed 638. Substance rather than form should determine legal consequences and usually 'the controlling test is found in the operation and effect of the statute as applied and enforced by the state.' Cf. Gregg Dyeing Co. v. Query, 286 U.S. 472, 476, 52 S.Ct. 631, 633, 76 L.Ed. 1232, 84 A.L.R. 831. Where a taxpayer challenges in court his obligation to pay a tax which the State demands, the court is called upon to determine the operation and effect of the taxing statute upon the matters in dispute. Characterization by the court of a tax as a 'tax on property' or as 'an excise tax' or as a 'recording tax' is a convenient method of describing the operation and effect of the tax statute -- its legal consequences -- but it must be remembered that characterization or description is dictated by the legal consequences of the statute and never dictates those consequences. Opinions of the courts in which a tax is described or classified as a 'tax on property' or as an 'excise tax' must be read, not as intended to indicate a mutually exclusive classification

to be applied in all cases; but rather as a summary of those characteristics which carry with them legal consequences of a particular kind....

"The problem which we must solve is not whether scientifically and logically the tax on mortgages should be described as an ad valorem tax on one species of personal property or whether it should be described as an excise tax which is not levied solely because of ownership or possession of personal property but rather how the tax should be characterized for the very practical purpose of determining whether the tax falls within the class of taxes, described in the Constitution, which may not be imposed in this State. We have pointed out that this court has in *People v. Trust Company of America*, supra, contrasted the system of taxation of mortgages under the statute of 1905 and the system of taxation of mortgages under the statute of 1906, which has not been materially changed. Though in many features the taxes are similar, yet because of other differing features this court has characterized the later tax as a 'recording tax' which has been prescribed in lieu of the 'annual property tax' prescribed by the statute of 1905. By emphasis on the feature that the tax is not an annual tax but is a tax payable only when a mortgage is recorded to obtain the benefit of the recording acts or to rid the mortgage or its owner from the penalties and drastic restrictions resulting from failure to record, the court in effect has placed one tax in the class of ad valorem taxes on property and the other in the class of excise taxes not levied solely because of the ownership or possession of the mortgage.

"We are told that what was there said is dictum, and is not legally sound. Decisions of the Supreme Court of the United States are cited where similar statutes of other States have been described and classified in other manner. *Federal Land Bank of New Orleans v. Crossland*, 261 U.S. 374, 43 S.Ct. 385, 67 L.Ed. 703, 29 A.L.R. 1; *Pitman v. Home Owners Loan Co.*, 308 U. S. ___, 60 S.Ct. 15, 84 L.Ed. ___, 124 A.L.R. 1263, Nov. 6, 1939. On the other hand, it may be pointed out that in many States similar taxes have been characterized and classified as excise taxes imposed for the privilege of recording. / citing cases/....

"We may assume, arguendo, that what we said in *People v. Trust Company of America*, 205 N.Y. 74, 98 N.E. 207, is a dictum and that other characterization or classification would not only be justified but might, logically, be sounder; yet the significant fact would still remain that the characterization was made and that nothing said or decided in *People v. Trust Company of America*, 208 N.Y. 463, 102 N.E. 578, or in any other case has weakened the force of the characterization or classification. It has not been challenged here and it has been followed in other jurisdictions.

"In deciding whether the tax on mortgages falls within one class or the other as defined in the Constitution, we cannot ignore the fact that judicial characterization or classification of the mortgage tax had been made previously and had not been challenged here. The language of the Constitution must be read in the light of that circumstance. We conclude that the court below has correctly decided that the prohibited class of taxes as defined by the Legislature was never intended to include a tax which might reasonably be excluded from that class and which this court has said falls into another class.

"We have passed upon the claim that article II of the Tax Law conflicts also with section I of the Fourteenth Amendment of the Constitution of the United States, U.S.C.A., and we have rejected the claim."

COVENANTS - RESTRICTIONS

(Steward v. Cronan et al., --- Col. --- 98 Pac. 2d 999).

A restrictive covenant agreement, not to sell or lease certain lots to colored persons and not to permit colored persons to occupy such lots for designated length of time is valid.

Plaintiff, a colored person, sought to quiet title to certain real estate in Denver on which he held a purchase contract obtained from the widow of one of the covenantors, and to have declared void a certain restriction agreement under which persons of his race were prohibited from occupying premises in the restricted area.

The restrictive covenant agreement, which expires in 1941, was executed by a small group of white people. Its pertinent clause was as follows: "The undersigned for themselves and their heirs and assigns covenant and agree not to sell or lease the said above described lots and parcels of land owned by them respectively, or any part thereof, to any colored person or persons, and covenant and agree not to permit any colored person or persons to occupy said premises during the period from this date to January 1, 1941."

Plaintiff contended that the restriction was void, and among other reasons stated that it was void because it violated both state and federal constitutions and is against public policy. He further contended that the opinion in Chandler v. Ziegler, 88 Colo. 1, 291 P.822, is obiter dictum as applied to the facts of this case.

The court held that the Ziegler case was applicable to this case and therefore stare decises. The court said:

"The pertinent restrictions involved in the Ziegler case, considered in connection with the representations upon which plaintiffs therein relied, were not substantially different in language from those in the case at bar.

"Plaintiff seeks to emphasize what he asserts is the fact, that the main question in the Ziegler case was one of fraud and deceit, but such attempted distinction is not apparent. The fraud in that case went directly to the proposition of the restriction involved which became the essence of the litigation.

"No new decisions touching the question here under consideration are cited by plaintiff which have been announced since the Ziegler opinion was reported."

EASEMENTS

(Blumberg v. Weiss, Court of Chancery of New Jersey, 10 A. 2d 743).

A grantee of land, over which an apparent easement exists in favor of adjoining land of grantor, takes subject to the burden of that easement, notwithstanding that the conveyance is by full covenant and warranty deed free from incumbrance, and will be restrained from doing any act which will interfere with the necessary beneficial enjoyment of the easement. Where owner of two adjoining tenements conveyed one, and implied easement of light and air in favor of the realty retained was apparent and necessary to reasonable enjoyment of realty retained, grantee took subject to implied easement.

The plaintiff owned two adjoining buildings, one of which he conveyed to defendants by full covenant and warranty deed free of encumbrance. The building he conveyed to defendants was not as long as the one he retained. Defendants added a part to the building and later attempted to extend the building the length of the lot. To do so would block off from plaintiff's building some windows overlooking the vacant part of the lot. Plaintiff brought this action to enjoin defendants from building an extension to their building and from erecting any other structure which would interfere with plaintiff's claimed right of light and air through his windows. In so upholding plaintiff's contention the court said:

"Cases involving the right to light and air usually arise where the owner of two adjoining lots, on one of which is a building which enjoys the apparent right of light and air through windows therein over

the other lot, conveys the lot built on and retains the other. In such cases it is settled that the grant of the dominant tenement carries with it all its appurtenances including all things necessary to its convenient and beneficial enjoyment and therefore there is an implied grant to the grantee, of the right to light and air through windows which overlook the retained servient tenement, which right cannot be obstructed or materially interfered with (*Sutphen v. Therkelson*, 38 N.J. Eq. 318; *Cerra v. Marlio*, 98 N.J. Eq. 481, 131 A.96, affirmed 100 N.J. Eq. 341, 134 A. 916; *Engel v. Siderides*, 112 N.J. Eq. 451, 164 A. 397), but here we have the converse situation where the owner of two adjoining lots claims the right to light and air as an easement in favor of the lot he retained, binding on the lot he conveyed without reservation.

"The leading case in our reports applicable to the situation with which we are concerned, is *Central R.R. v. Valentine*, 29 N.J.L. 561, the syllabus of which states that where the owner of land conveys part of it, 'the grantee takes the land conveyed, and the grantor holds the part retained, with the right to whatever is necessary to the enjoyment of their respective premises, for the purposes for which they are then, or are intended to be used, whether such intended use is mentioned in the deed or not.' That case holds that the grantee of the part conveyed takes such part with all benefits and all burdens which at the time of the conveyance appear to belong to it, as between it and the property the grantor retains, and it is authority for the contention that the existence of a window or windows which admit light and air to a building on land retained by the grantor at the time he makes conveyance of adjoining land, gives such grantor an implied easement over the adjoining land, to maintain his windows unobstructed in the absence of a distinctly expressed intention in the deed to destroy such easement. Authority to the same effect is also to be found in *Seymour v. Lewis*, 13 N.J. Eq. 439, 78 Am. Dec. 108; *Denton v. Leddell*, 23 N.J. Eq. 64; affirmed 24 N.J. Eq. 567; *De Luze v. Bradbury*, 25 N.J. Eq. 70; *Kelly v. Dunning*; 43 N.J. Eq. 62, 10 A.276, affirmed 46 N.J. Eq. 605, 22 A. 128; *Larsen v. Peterson*, 53 N.J. Eq. 88; 30 A.1094; *Greer v. Van Meter*, 54 N.J. Eq. 270, 33 A. 794; *Taylor v. Wright*, 76 N.J. Eq. 121, 79 A. 435....

"Whatever merit I might be inclined to find in the argument advanced on behalf of the defendants here that, because complainant conveyed to them by full covenant and warranty deed containing no reservation, he should be estopped from asserting a right which is in derogation of his deed, I feel bound to follow *Central R.R. v. Valentine*, supra and the cases which support the doctrine therein enunciated, and decide that the right to free passage of light and air through the windows in complainant's dwelling was reserved to complainant by implication as a quasi easement, if such windows were a parent to defendants when they took title to their lot and if such easement is necessary to

the beneficial enjoyment of complainant's dwelling.

"That the existence of windows was apparent is not and cannot be doubted. As to complainant's necessity for their use, the rule is not that the easement must be absolutely necessary to any enjoyment of complainant's property, but that it is sufficient if it be reasonably necessary for convenient, comfortable or beneficial enjoyment....."

FIXTURES - APPURTENANCES

(Szilagyi v. Taylor, - Ohio -, 25 N. E. 2d. 360)

Where owner of two adjoining lots constructed a building with intention that building be located wholly on one lot, but, unknown to him, a small part of building encroached on the other lot, and thereafter lots with appurtenances were purchased by different persons, without knowledge of encroachment, owner of lot on which building was intended to be located could, on discovery of encroachment, enter on other lot and remove part of building encroaching thereon, without committing a trespass, since encroaching portion was not an 'appurtenance' to lot on which it encroached.

An owner of adjoining lots built a building on one lot and by mistake he built a small portion on his adjoining lot. He mortgaged the lot upon which almost the entire building was constructed and sold the other lot to plaintiff. The appellee herein later obtained possession of the mortgage without any knowledge of the mistake concerning the location of the building. He later foreclosed on the mortgage and became the purchaser of the premises. At this time neither he nor appellant knew of the mistake.

Appellant discovered the mistake and made claim to an ownership of the small part of the building that encroached on his premises. Before suit was brought the appellee removed that portion of the building from appellant's premises. Appellant then brought suit to compel the appellee to replace upon appellant's property the part of the building formerly thereon and also sued for damages for trespass. He contended that he acquired title to a portion of the building in question as part of the real estate which he purchased.

In denying relief to the appellant the court said:

"To maintain that claim under the circumstances shown here, it is necessary that it be shown that the portion of the building in question was, at the time of the conveyance of the lot to the appellant,

an appurtenance. Things pass as incidents to or appurtenances of realty when they are attached thereto and are essential to its use; in other words, when they are fixtures. Two general tests to be applied in determining whether a particular article is a fixture are, adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated, and intention to make the article a permanent accession to the freehold.

"While the thing claimed in this case as an appurtenance was attached to the real estate, the facts disclose conclusively that it was not so attached with an intention to make it a permanent part thereof, and also that it was not adapted to such use as a part of the realty; and therefore the appellant had no title to the part of the building which stood on his premises, and was not entitled to have the same replaced thereon; and, the appellee being the owner of the entire building, was not a trespasser when he entered upon appellant's premises to remove the portion of the building which stood thereon, because appellee had a right to remove the same to his own premises.

"The appellee was not liable in damages for doing that which he had a right to do, and the trial court was right in directing a verdict in his favor and rendering judgment for him. The judgment is therefore affirmed."

MORTGAGES

(Interstate Bond Company vs. HOLC, Court of Appeals of Kentucky. March 1, 1940).

The 5% penalty and 1% per month penal interest provided in Section 3002, Kentucky Statutes do not apply to case where a mortgagee is not redeeming from tax sale but is only asserting his mortgage lien,--but purchaser of tax bills is entitled as against mortgagee to priority as to July 1st penalty of 10% paid by it to City at time of purchase, construing Sections 2998 and 3004, Kentucky Statutes.

In a suit in Kentucky instituted by the holder of a street assessment lien to foreclose said lien on realty mortgaged to HOLC, a controversy arose between HOLC and Interstate Bond Company, purchaser of tax bills and holder of a tax deed, as to how much of the proceeds of the sale of the realty Interstate was entitled to receive prior to the receipt of anything by HOLC. The Chancellor held that Interstate was entitled to receive ahead of HOLC the following:

1. The 1935 tax bill of \$29.83 (previously purchased by Interstate and which included the July 1st penalty of 10%) together with a 5% penalty and interest at the rate of 1% per month from November, 1935, to November, 1937 (the end of the redemption period) and interest thereafter at 6% per annum until paid.

2. The 1936 tax bill of \$30.93 and the 1937 tax bill of \$28.99, paid by Interstate to the City at the time of the purchase, with 6% interest thereon until paid, these amounts including the July 1st penalties of 10% of each of the sums.

On appeal to the Court of Appeals of Kentucky, Interstate contended that it should have been adjudged a lien as follows:

1. On the 1935 bill, a 5% penalty and interest at the rate of 1% per month from November, 1935, until paid.

2. On the 1936 and 1937 bills a 5% penalty and interest at the rate of 1% per month from November, 1937, until paid.

HOLC contended in the Court of Appeals that although Interstate had a lien superior to its mortgage, the Chancellor was in error in holding Interstate was entitled to recover:

1. For the 5% penalty and the penal interest on the 1935 bill during the two-year redemption period.

2. For the July 1st penalties of 10% paid by Interstate on the bills for 1936 and 1937.

The Court of Appeals held that since HOLC was not redeeming from a tax sale but was simply asserting its mortgage, the 5% penalty and 1% per month penal interest provided in Section 3002, Kentucky Statutes had no application, the Chancellor was correct in holding that Interstate was not entitled to the 5% penalty and penal interest on the 1935 tax bill after the two-year redemption period and was not entitled to that penalty and penal interest on the 1936 and 1937 bills. For the same reason the Court of Appeals held that the Chancellor was in error in so far as he allowed Interstate that penalty and penal interest on the 1935 bill during the two-year redemption period.

The Court of Appeals overruled the contention of HOLC that Interstate was not entitled to the July 1st penalties of 10% paid by it to the City on the tax bills for 1936 and 1937. In so doing, the Court construed Sections 2998 and 3004, Kentucky Statutes, and based its holding upon the proposition that as to this penalty a mortgagee who claims through the owner has no greater rights than the owner.

MORTGAGES - PRIORITY OF LIENS

(Adam J. Smith et al vs. HOLC, Court of Appeals of Erie County, Pa., March 1940).

Until judgment of Municipal Court in Ohio becomes a lien on realty by the filing in the office of the Clerk of the Court of Common Pleas of a certificate thereof, it is not incumbent upon mortgagee of realty to make holder of the judgment a party defendant to the foreclosure suit.

After HOLC had foreclosed its mortgage executed by Eshenroder by a court proceeding in the Court of Common Pleas of Erie County, Ohio, in which it took a personal judgment against him and after it had bid in the property at foreclosure sale and had received and recorded a sheriff's deed, Smith filed a petition against HOLC in the Court of Common Pleas of Erie County alleging that in December 1935 he had taken a judgment for \$54 and costs against Eshenroder in the Municipal Court of Sandusky, Erie County, Ohio; that on October 5, 1936, he had caused to be filed in the Office of the Clerk of the Court of Common Pleas of Erie County a lien certificate of his judgment; that on October 26, 1937 and again on November 22, 1937, executions had been issued from the Court of Common Pleas on his judgment (although they were not levied) and that he therefore had a lien on Eshenroder's property to which HOLC had title by virtue of its foreclosure and its receipt and recording of its sheriff's deed.

The evidence showed that HOLC had instituted its foreclosure suit against Eshenroder (with personal service of process) on May 20, 1936, and that on August 10, 1936, the Court had entered a personal judgment and foreclosure decree - both prior to the filing of the certificate of Smith's judgment in the office of the clerk of the Court of Common Pleas of Erie County on October 5, 1936. The evidence also showed that the sale to HOLC in its foreclosure suit had been confirmed several months before the issuance of the first execution of Smith's judgment.

The Court of Common Pleas held that since the certificate of Smith's judgment was not filed in the office of the Clerk of the Court of Common Pleas of Erie County so as to become a lien on the realty until after HOLC had instituted its foreclosure suit, the institution of which constituted a lis pendens, it was not incumbent on HOLC to make Smith a party defendant to said foreclosure suit, but that it was incumbent on Smith, if he desired to seek any advantage from the realty involved in the foreclosure suit, to have himself made a party to the foreclosure suit, which he had failed to do. The Court therefore held that Smith had no interest in or lien on the property of which HOLC had become the owner by its purchase at the sale in its foreclosure suit. This decision of the Court of Common Pleas of Erie County, Ohio, was affirmed by the Court of Appeals of Erie County, Pa.

MORTGAGES - PRIORITY OF LIENS - WATER CHARGES(HOLC v. City of Detroit, - Mich - March 15, 1940)City of Detroit has no lien on realty to protect water charges for service furnished to former mortgagors or their tenants prior to Act. No. 178, Pub. Acts 1939 (Stat. Ann. Sec. 5.2531(1) et seq.), approved June 8, 1939.

In a suit between HOLC and the City of Detroit, Michigan, the City claimed liens on properties acquired by HOLC through foreclosure of its mortgages and the acceptance of voluntary deeds in lieu of foreclosure for the amount of unpaid water charges incurred by the mortgagors after the execution of the mortgages but prior to the acquisition of title and possession by HOLC. The City also claimed the right to enforce its claimed liens by refusing to furnish further water service to the properties unless and until such water charges had been paid.

The Charter of the City purported to fix such water charges as liens on the realty and the City claimed that this charter provision was authorized by Comp. Laws of Michigan, 1929, Section 2240 (Stat. Ann. Sec. 5.2083) which provided as follows:

"Each city may in its charter provide: . . . for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state."

The Supreme Court of Michigan recognized that municipal corporations possess and can exercise powers necessarily or fairly implied in or incident to the powers expressly granted and also those powers essential to the accomplishment of the declared objects and purposes of the corporation, but it held that substantial doubt as to the existence of any particular power claimed by a municipal corporation should be resolved against it. It further held that a claimed power, not expressly given and only convenient - not indispensable - to the declared objects and purposes of the corporation, can not be implied or recognized.

It therefore held that the statute above quoted did not give the City a lien on, or the right to refuse water service to, the HOLC properties until water charges incurred by former mortgagors and their tenants had been paid.

MORTGAGES - PRIORITIES OF LIENS - TAXATION

(Maricopa County et al. v. City of Phoenix,---Ariz.---, 98 P.2d 469).

A paving assessment lien on realty is superior to a mortgage on the realty even though the mortgage was recorded prior to creation of the lien, but the mortgage is superior to a lien on the realty for a personal property tax which has attached after the recording of the mortgage.

The plaintiff, City of Phoenix, brought an action against defendants to quiet the title of plaintiff to certain real property. It appears that the City of Phoenix bought the property from the Southwestern Mfg. & Supply Co. at a sale for failure of this company to meet assessments against it by the City of Phoenix. A deed was conveyed to plaintiff and duly recorded. Defendants had assessed and levied taxes against the company for the years 1932-33-34-35-36 on its personal property and upon the real estate involved herein, and taxes for the years 1937 and 1938 on the real estate alone, and had later foreclosed the lien given by law for all these taxes against the real estate.

"It was admitted at the trial by all parties that the lien of defendants for the real property taxes levied against said property for the year 1937 and all years prior thereto was superior to the title of plaintiff, but that all taxes levied subsequent to the recording of the deed of plaintiff above referred to were void.

"It was contended by plaintiff that the lien of defendants for personal property taxes above referred to was subordinate to the lien for the special assessment on which plaintiff's title was based, while defendants maintained that such lien was superior to that of plaintiff. This is the only issue in the case."

The court in affirming the decision of the lower court and in upholding plaintiff's contention said:

"We have had the respective priorities of tax and mortgage liens before us in a number of cases. The first in which any of the points involved in the present case was raised was Walker v. Nogales B. & L. Ass'n, 28 Ariz. 484, 237 Pac. 1094, decided in 1925, where the question of the respective priorities of liens for personal property taxes assessed to the owner of real estate and prior recorded mortgages on the real estate was concerned. We held that under the law as it existed at that time the lien of a mortgage upon real estate was inferior and junior to all tax liens for taxes upon that particular land whether they attached before or after the mortgage, but was superior to tax liens for taxes levied upon other property of the same owner and attaching after the mortgage lien had attached...."

"In the case of Home Owners' Loan Corporation v. City of Phoenix, 51 Ariz. 455, 77 P. 2d 818, the question was raised again as to the relative superiority of tax liens for personal property taxes upon realty owned by the owner of the personal property, and mortgages upon the real estate. We cited our decision in the Walker case, supra, and then discussed subsequent legislation at considerable length, and concluded that the legislature had, in effect, first set aside and then restored the principle of law declared in the Walker case, supra, and that the final result was to reaffirm the rule laid down in that case that a lien for personal property taxes attaching to real estate after a realty mortgage was recorded was inferior to the mortgage lien. . . .

"The law then is that a paving assessment lien, being a lien upon real estate, is superior to a mortgage on the same real estate even though the mortgage was recorded prior to the creation of the lien. Sec. 536, R.C. 1928. This mortgage, however, is superior to a lien upon the same real estate for the personal property tax which has attached after the recording of the mortgage. If we hold, in addition, that the personal property tax lien is superior to a paving assessment lien, which attached before the personal property tax lien did, the situation may be stated in the following form: A, a paving assessment lien, is superior to B, a mortgage; B, the mortgage, is superior to C, a personal property tax lien; while C is superior to A. The absurdity of such a situation is obvious." . . .

"If we thus consider the paving lien, it is apparent that it is of the same rank as a prior mortgage upon the property in question, and under the decision in Home Owners' Loan Corp. v. City of Phoenix, supra, is inferior to the real property tax on the mortgaged property, but superior to the lien of the personal property tax which has been assessed against the realty.

"We think this is the correct interpretation of the law applicable to the present case, and the judgment of the superior court is, therefore, affirmed."

TAXATION - INTERNAL REVENUE

(Stern Bros. & Co. v. Commissioner of Internal Revenue, Circuit Court of Appeals, Eighth Circuit, 108 Fed.(2d)309).

Profits from sale of Joint Stock Land Bank bonds issued under the Farm Loan Act are not exempt from taxation.

The petitioner sold at a profit bonds of Joint Stock Land Banks issued under the Federal Farm Loan Act of July 17, 1916. Believing that

the profits derived from the sale of these bonds were exempt, the petitioner did not include them in taxable income in making tax returns. The Commissioner, being of the opinion that these profits were taxable, added them to the income of the petitioner subject to tax, and proposed deficiencies accordingly.

The only question presented is whether the profits in suit were nontaxable because of section 26 of the Farm Loan Act, which provides that bonds issued under this Act "shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation." The Board in this case and in the case of *Agricultural Securities Corporation v. Commissioner*, 39 B.T.A. 1103, has ruled that section 26 did not exempt profits derived from the sale of such bonds. "*Stewart v. United States*, D.C., 24 F. Supp. 145, which was to the same effect, was reversed by the United States Circuit Court of Appeals of the Ninth Circuit in *Stewart v. United States*, 106 F.2d 405, that court being of the opinion that Section 26 exempted all income from such bonds, including gains derived from the sale thereof. This divergence of informed opinion as to the meaning and scope of Section 26 indicates that the question will not be put to rest until it has been decided by the Supreme Court of the United States."

In holding the profits taxable the court said further:

"... The judges who decided *Stewart v. United States*, 9 Cir., 106 F.2d 405, were convinced that the language of Section 26 was unambiguous and expressed the intent of Congress that profits derived from the sale of bonds issued under the Act should be nontaxable. Being of that view, they could have reached no other conclusion than that such profits were exempt. On the other hand, a majority of the members of the Board of Tax Appeals were of the opinion that a doubt existed as to the meaning and intent of Section 26, which doubt they were required to resolve in favor of the Government. See *Svan & Finch Co. v. United States*, 190 U.S. 143, 146, 23 S.Ct. 702, 47 L.Ed. 984; *Cornell v. Coyne*, 192 U.S. 418, 431, 24 S.Ct. 383, 48 L.Ed. 504; *Pacific Co. v. Johnson*, 285 U.S. 480, 491, 52 S.Ct. 424, 76 L.Ed. 893.

"We think there is doubt as to whether Section 26 was ever intended to exempt profits derived from the purchase and sale of bonds issued under the Farm Loan Act. We agree that the language of Section 26 is susceptible of a construction which would make such gains nontaxable, but we do not agree that that is the only meaning which may be accorded to the language used. There are several considerations which have influenced us in reaching this conclusion. . . .

"It is our conclusion that there is nothing in the language of Section 26, or in its legislative history, or in the administrative rulings made with regard to it, or in subsequent legislation dealing with the same subject matter, which conclusively establishes that the profits derived by the petitioner from the sale of the bonds in question were non-taxable. We are not convinced that the Board's decision was erroneous."

TAXATION - STATE INCOME TAX

(Tradesmen's National Bank of Oklahoma City v. Oklahoma Tax Comn.,
- U.S. - No. 596; Mar. 25, 1940. 8 L.W. 515)

Measure - National Banks - Net income including interest on
tax-immune federal securities - Constitutionality - Validity
under R.S. 5219.

Oklahoma Income Tax Law of 1935 (S. L. 1935, Ch. 65, Art. 6), imposing a tax on national banks doing business within the State measured by net income, including interest upon obligations of the United States or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free, does not violate the Federal Constitution, or Section 5219, Revised Statutes.

The 1935 Act expressly follows and adopts the method of taxation authorized by the amendment to R.S. 5219 of Mar. 25, 1926 - providing for a tax on national bank associations measured by the entire net income received from all sources. "Any immunity attaching to the franchise by virtue of R.S. 5219 as it read prior to the 1926 Amendment. . . could be withdrawn by Congress and franchises subjected to the State taxing power."

Amendment of the Oklahoma statute to expressly include in the measure of the tax, interest on federal securities which had been expressly excluded from the measure did not render the tax an unconstitutional levy on the tax immune income itself, in the manner condemned in *Macallen v. Massachusetts*, 297 U.S. 620. The amendment sought only to change the State's tax policy pursuant to the express authorization conferred by R.S. 5219.

Nor does the tax violate the restriction in R.S. 5219 against discrimination against national banking associations. Examination of the whole tax structure of the State shows that the scheme adopted by Oklahoma does not discriminate against national banking associations. "Discrimination is now shown merely because a few individual corporations, out of a class of several thousands which ordinarily bear the

same or a heavier tax burden, may sustain a lighter tax than that imposed on national banking associations."

TITLES - TORRENS ACT

(Vinewood Realty Co. et al. v. Village of Willowick et al--- Ohio, 25 N.E. 2d 345).

The predominant object of the Torrens Act is the establishment of a method whereby title to a particular tract or parcel of realty will always be ascertainable by reference to a register of conclusive veracity, maintained by the designated public official. In Ohio the registration of land titles is governed by the Torrens Act.

For the purposes of this digest a brief of the facts in the case stated herein will be omitted and only that part of the case discussing the Torrens Act will be inserted in full herein.

"The registration of land titles in Ohio is governed by Sections 8572-1 to 8572-118, General Code. Such legislation, since amended in some respects, was enacted in 1913, pursuant to the authorization of Section 40, Article II, of the Ohio Constitution, adopted the previous year, and is most often referred to as the Torrens Act, after Sir Robert Richard Torrens (1814-1884), of South Australia, who introduced the system to the English speaking world near the middle of the last century.

"A succinct statement of the general mode of procedure for the registration of land under the Torrens Act may be found in 5 Tiffany on Real Property (3d Ed.), 113, Section 1316.

"The predominant object of such legislation is the establishment of a method whereby the title to a particular tract or parcel of real estate will be always ascertainable by reference to a register of conclusive veracity, maintained by the designated public official, 5 Tiffany on Real Property (3d Ed.), 109, Section 1314. See, also, Curry et al., Bd. of Com'rs. v. Lybarger, County Recorder, 133 Ohio St. 55, 58, 11 N. E. 2d 373, 875.

"Registration of the title to the land, instead of registering, as under the old system, the evidence of such title, is the basic principle of the plan. In re Bickel, 301 Ill. 484, 492, 134 N. E. 76, 80.

"Where a decree of registration under the Torrens Act has been rendered by the proper court, the record duly made and the certificate issued, the land becomes registered land, the official certificate show-

ing the complete state of the title. Robinson v. Kerrigan, Judge, 151 Cal. 40, 90 P. 129, 121 Am.St.Rep. 90, 12 Ann. Cas. 829; 53 Corpus Juris, 1126, Section 107; 23 Ruling Case Law 277, Section 149.

"While ordinarily the owner of the fee-simple estate is the one authorized to obtain registration of the title, the rights of owners of lesser estates are recognized and protected by statements or memoranda upon the certificate of the owner in fee simple, and separate certificates are unnecessary. 5 Tiffany on Real Property (3d Ed.), 114 and 119, Sections 1316 and 1319.

"Legislation of this kind, being remedial in nature, is to be liberally and reasonably construed to effectuate its purpose and intent. Section 8572-101, General Code.

"With these observations as a background, we come to a consideration of the contentions of the opposing parties.

"In brief, the main argument of the appellants is that under the Ohio Torrens Act, having particular regard for language used in Sections 8572-4 and 8572-5, General Code, the Probate Court was authorized to quiet title to and register the perpetual leasehold estate of The Vinewood Land Company, without quieting title to and registering the reversion; that this is precisely what was done, as is shown by the decree of the court, and, therefore, the reversionary title not having been registered, plaintiff's petition is without merit or effect.

"On the other hand, the plaintiffs maintain that in a registration proceeding under the Ohio Torrens Act, giving due weight to the purposes and intent of the act in its entirety, the land or res is registered rather than the titles in and to the res, and where the title to a lesser estate is noted in the registration decree and appears on the certificate of title in the register of the county recorder, such title is effectively registered.

"Upon a consideration of the various pertinent provisions of the Ohio Torrens Act, in a number of which the term 'Registered lands' and the word 'register' are used in different forms in relation to different estates and interests, and keeping in mind the object and design of the whole act, this court entertains the view that when the reversionary estate in fee was noted in the decree of the Probate Court and was plainly written on the certificate in the register of the county recorder, such estate or interest became 'registered,' and must be so recognized, despite certain language in the act, which standing alone might be interpreted as supporting the appellants' contention that the perpetual leasehold alone was registered.

"A contrary holding would certainly tend to confuse and weaken the operation of the Torrens system. . ."

TORTS

(Larry Curtis and Ruth Curtis v. HOLC, Second District Court of Jersey City, New Jersey, March 1940).

HOLC is not liable to tenant for personal injuries sustained in explosion of gas range in kitchen of rented property where facts showing actionable negligence was not proven.

In a suit against HOLC instituted by a tenant, Mrs. Ruth Curtis, to recover damages for personal injuries resulting from a combination gas and oven range in the kitchen of the property, the trial court at the conclusion of all the evidence rendered judgment in favor of HOLC. The plaintiff and her husband testified as to the happening of the explosion and the resulting injuries to Mrs. Curtis but plaintiff introduced no expert testimony as to the condition of the range or the cause of the explosion. They testified that at the time they rented the property they had an oral agreement with the contract management broker of HOLC who rented the property to them that the range would be in first-class condition. The written lease, however, contained a statement that there were no "written or verbal conditions or stipulations, other than herein specified."

The contract management broker of HOLC denied the existence of any verbal agreement relating to the condition of the range, and other witnesses for HOLC testified that the range was of the type commonly used in homes in the locality; that shortly after the explosion the range was examined and no defects found, that the range had been reconditioned shortly prior to the letting of the property to plaintiffs and that the range had no defects at the time of the letting. The testimony in behalf of HOLC was also to the effect that plaintiffs never, prior to the accident, gave notice of any supposed defects in the range.

The decision in favor of HOLC was no doubt on the ground that there was no implied warranty of the suitability of the range, no concrete evidence of negligence and no basis for the appreciation of the doctrine of *res ipsa loquitur*.

UNITED STATES - CROSS CLAIMS - IMMUNITY FROM SUIT

(United States v. Shaw, ___, U. S. ___, No. 570. March 25, 1940).

The United States did not, by filing a claim against decedent's estate in a state probate court, subject itself to a determination of its liability on a cross claim in excess of the amount allowed on its original claim.

The question considered in this case was whether the United States by filing a claim against an estate in a state court subjected itself, in accordance with local statutory practice, to a binding, though not immediately enforceable, ascertainment and allowance by the state court of a cross-claim against itself. The United States Supreme Court held that it did not, and in reversing the decision of the Supreme Court of Michigan stated:

"... There is no contention on the part of respondent that the judgment is enforceable against the United States even in the limited sense of statutory direction to report the judgment to Congress as in the Court of Claims Act or the Merchant Marine Act. Execution against property of governmental agencies subjected to such procedure by statute is sometimes allowed. The position taken is that the probate court judgment is a 'final determination' of the rights of the litigants, howsoever such rights may later become important. We are not here concerned with the manner of collection. Such was the holding of the Supreme Court of Michigan.

"The state procedure for the determination of the balance against or in favor of an estate, which was employed here, was the recognized method of closing an estate at the time of the probate judgment. The probate judge was empowered to act as commissioner under the statute quoted above. His decision unreviewed was considered final. The determination of the probate court between private parties was enforceable without re-examination in the circuit court. Even the right to execution is not essential to a complete judicial process. The order entered was a final determination of the amounts due the estate by the United States on this claim and cross-claim of the probate court had jurisdiction to render the order against the petitioner.

"Whether that jurisdiction exists depends upon the effect of the voluntary submission to the Michigan court by the United States of its claim against the estate. As a foundation for the examination of that question we may lay the postulate that without specific statutory consent, no suit may be brought against the United States.

"No officer by his action can confer jurisdiction. Even when suits are authorized they must be brought only in designated courts. The reasons for this immunity are imbedded in our legal philosophy. They partake somewhat of dignity and decorum, somewhat of practical administration, somewhat of the political desirability of an impregnable legal citadel where government as distinct from its functionaries may operate undisturbed by the demands of litigants. A sense of justice has brought a progressive relaxation by legislative enactments of the rigor of the immunity rule. As representative governments attempt to ameliorate inequalities as necessities will permit, prerogatives of the government yield to the needs of the citizen. By the act of March 3, 1797, and its successor legislation, as interpreted by this Court, cross-claims are allowed to the amount of the government's claim, where the government voluntarily sues. Specially designated claims against the United States may be sued upon in the Court of Claims or the district courts under the Tucker Act. Special government activities, set apart as corporations or individual agencies, have been made suable freely. When authority is given, it is liberally construed. *Keifer & Keifer v. RFC*, 306 U. S. 381; *FHA v. Burr* /--U.S. - Feb. 12, 1940/. As to these matters no controversy exists.

"Respondent contends this immunity extends, however, only to original suits; that when a sovereign voluntarily seeks the aid of the courts for collection of its indebtedness it takes the form of a private suitor and thereby subjects itself to the full jurisdiction of the court. The principle of a single adjudication is stressed as is the necessity for a complete examination into the cross-claim, despite attendant dislocation of government business by the appearance of important officers at distant points and the production of documents as evidence, to justify the allowance of an offset to the government's claim. It is pointed out that surprise is not involved as no cross-claim may be proven until after submission to and refusal by the government accounting officers. Respondent further insists that his position is supported by *The Thekla*, 266 U. S. 328, and subsequent decisions quoting its language. Emphasis is placed upon the fact that these probate proceedings are in rem or quasi in rem as were the libels in admiralty in *The Thekla*.

"It is not our right to extend the waiver of sovereign immunity more broadly than has been directed by the Congress. We, of course, intimate no opinion as to the desirability of further changes. That is immaterial. Against the background of complete immunity we find no Congressional action modifying the immunity rule in favor of cross-actions beyond the amount necessary as a set-off. . . .

"The suggestion that the order of the probate court is in reality not a judgment but only a 'judicial ascertainment' of credits

does not affect our conclusion. No judgment against the United States is more than that. But such an entry, if within the competence of the court passing the order would be res judicata of the issue of indebtedness. . . .

"We have considered respondent's further argument that sovereign immunity was waived when the United States took possession of the assets of its agent the Fleet Corporation prior to the institution of this action and later, but prior to the entry of the probate judgment appealed from, assumed the Corporation's obligations by the act of June 29, 1936. We see nothing in these transactions which indicates an intention to waive the immunity of the United States in the state courts."

ZONING

(State of Montana, ex rel. Great Falls Housing Authority v. The City of Great Falls. Opinion decided March 19, 1940 by the Supreme Court of Montana).

After a city council has validly created a local housing authority pursuant to statutory mandate, all acts to be done by the city in order to perfect such project may be compelled by mandamus, including the enactment of an ordinance to rezone property and vacate streets.

This case involved an original proceeding for a writ of mandamus to compel the City Council to comply with the terms of an agreement between the Housing Authority and the City by which the City Council had agreed to zone or rezone such lots and blocks as should be purchased by the Housing Authority and to vacate and close certain streets, avenues and alleys in such lots and blocks.

After the Housing Authority had been created by the City Council, pursuant to statutory provisions, and had purchased certain lots and blocks and obtained a loan from the USHA for the purpose of constructing a low-rent housing project, a request was made upon the City Council to vacate certain streets and alleys and to zone and rezone the property purchased. The Council refused to do either.

The City raised no question as to the regularity of the proceedings of the City Council in creating the Housing Authority but did contend that subsequent proceedings of the City Council in relation thereto were irregular in that they did not comply with the statutes relating to municipal corporations.

The Court refused to accept this view and concluded that after the City had created the Housing Authority, appropriated money for overhead expenses for the first year, and had done acts of similar import, "the general municipal statutes ceased to have any further application in the premises, and all things thereafter done and performed in relation to the Great Falls Housing Authority passed under the exclusive control of the provisions of the Housing Authorities Law. . . . The official machinery of the municipality was merely employed to determine the necessity for the creation of the Authority and that having been done as the free act of the City Council, it had no further discretionary function to perform in the premises."

After pointing out that the City Council under the circumstances, must comply with the provisions of the Housing Act insofar as its cooperation is required, the Court stated:

"This conclusion is especially true where the City is given the right in the first instance to pass upon the question of the existence or non-existence of the necessity for the housing project, and has found that such necessity exists, and has, by its own affirmative act, created the Authority. Under such circumstances, it must follow that the city has given its consent to assume the burdens of the Act as well as to receive benefits therefrom."

The court held that the execution of the contract by the City pursuant to the creation of the Authority was not a discretionary matter but was a mere ministerial duty and that acts of the City Council of a contractual nature cannot be repudiated by any subsequent council whether the membership of the council be the same or not; that "when the council authorized the creation of the Great Falls Authority it assumed all the obligations involved essential to a perfected project."

It was held that mandamus would lie and the writ was issued.

ZONING

(Kraft v. Village of Hastings-On-Hudson et al, Supreme Court, Appellate Division, Second Department, 17 N.Y.S. 2d 631).

Where suitability of property for residential use is a debatable question, the court may not substitute its judgment for that of local legislative body as expressed in village zoning ordinance restricting use of such property to residence purposes.

This action was brought by plaintiff against defendants for a declaratory judgment, declaring the village zoning ordinance unconstitutional and void so far as restricting use of plaintiff's property to residence purposes, and directing the village building inspector to issue a permit for the construction of a gasoline station and restaurant thereon. The plaintiff won judgment and the defendants appealed.

In reversing the decision the court held:

". . . This court makes a new finding that the zoning of plaintiff's property for residential use does not deprive the owner of the beneficial use of the land. . .

"At most, the suitability of plaintiff's property for residential use presents a debatable question. In such circumstances the court may not substitute its judgment for that of the local legislative body. *Matter of Fox Meadow Estates, Inc. v. Culley*, 233 App. Div. 250, 252 N. Y. S. 178, affirmed 261 N. Y. 506, 185 N. E. 714."

ZONING

(*Taylor v. Village of Glencoe*, ---Ill.---, 25 N. E. 2d 62).
If a restrictive ordinance bears no real and substantial relation to the preservation of public health, safety, or welfare, but is a capricious invasion of property right, the ordinance is invalid. A zoning ordinance may be valid in its general aspects, but when applied to a particular piece of property and a particular set of facts it may be so arbitrary and unreasonable as to result in a confiscation of property, and in such instance, when applied to the designated real estate, the ordinance is void.

The plaintiffs filed complaint for an injunction to restrain the Village of Glencoe from enforcing its zoning ordinance against the property of the plaintiffs. The provisions of the ordinance prohibited the use of this property for other than residential purposes, and the plaintiffs sought to restrain interference with the use of their property for certain commercial uses. The reasonableness of the zoning ordinance, as it applied to the property of the plaintiffs, was attacked because it was claimed to be an arbitrary discrimination and did not bear any relation to the public health, comfort, safety or welfare. The case was dismissed for want of equity and was brought to the Supreme Court of Illinois, the trial court having certified that the validity of a municipal ordinance was involved and that the public interest required a direct appeal to Supreme Court.

The facts of the case showed that the property in question is surrounded by commercial and industrial uses, which did not conform to the residential tencor of the property as established by the original zoning ordinance. The court in holding that the zoning ordinance, as it applied to this particular piece of property, was void, said:

. . . "This court has established the right and the power of cities and villages to enact zoning ordinances as an exercise of their police power. *City of Aurora v. Burns*, 319 Ill. 84, 149 N. E. 784; *People ex rel. Kirby v. City of Rockford*, 363 Ill. 531, 2 N. E. 2d 842; *Reschke v. Village of Winnetka*, 363 Ill. 478, 2 N. E. 2d 718. Under this power the city may impose certain regulations upon the use of property by its owners. Such restrictions must bear a real and substantial relation to the public health, safety, morals or welfare. *Koos v. Saunders*, 349 Ill. 442, 182 N. E. 415; *Forbes v. Hubbard*, 348 Ill. 166, 180 N. E. 767; *Catholic Bishop v. Kingery*, 371 Ill. 257, 20 N. E. 2d 583. If a restrictive ordinance bears no real and substantial relation to the preservation of the public health, safety or welfare, but is, in fact, a capricious invasion of property rights, then such an ordinance becomes invalid and cannot be sustained. *Forbes v. Hubbard*, supra; *Reschke v. Village of Winnetka*, supra. In *Johnson v. Village of Villa Park*, 370 Ill. 272, 18 N. E. 2d 887, 889, this court said: 'In considering the question of whether the particular ordinance is, in fact, in the interest of the public welfare, each case must be determined upon its own peculiar facts. A zoning ordinance may be valid in its general aspects, but when applied to a particular piece of property and a particular set of facts, be so arbitrary and unreasonable as to result in confiscation of the property. In such instance, when applied to designed real estate, the ordinance is void.'"

"The classification established by the zoning ordinance of the Village of Glencoe, as applied to the plaintiff's property, is arbitrary and unreasonable, and, failing to bear any relation to the public health, safety, morals and welfare, it cannot be sustained."

ZONING

(*Clinard et al. v. City of Winston-Salem et al.* ---N.C.---, 6 S. E. 2d 867).

A general zoning ordinance containing reciprocal inhibitions of occupancy of residential district by members of the white and negro races, fairly apportioned, was invalid, where the inhibitions standing alone would have been invalid as depriving owner of right, use, control, or disposition of his property, since the law will not permit the indirect accomplishment of that which it directly forbids.

The Board of Aldermen of Winston-Salem adopted a zoning ordinance which divided the city into a number of zones, with regulations and restrictions in each zone. One particular zone was restricted to persons of the Negro race and another zone was restricted to persons of the White race. An amendment to the zoning ordinance was adopted in March 1939 which changed the boundaries of some of the districts, and several houses owned by the plaintiffs were transferred from one area to another and are now situated in a residential district designated for occupancy by persons of the White race. The plaintiffs are White people except W. A. Kelly, Jr., who is a Negro. The White plaintiffs have leased their houses on this particular avenue to Negroes and W. A. Kelly, Jr., is one of the lessees and desires to continue residing there. Notices to vacate have been issued and served upon the occupants by the Municipal authorities.

Defendants have instituted this action from enforcing the provisions of the zoning ordinance as stated. A temporary restraining order was issued, but upon the return hearing the judge refused to make it permanent. An appeal was then taken.

The question for decision is whether reciprocal inhibitions of occupancy of residential districts by members of the White and Negro races, fairly apportioned, but admittedly invalid if they stood alone, may be inserted in a general zoning ordinance adopted under authority of law.

The court held that this could not be done and said that "The law will not permit the indirect accomplishment of that which it directly forbids. *Glenn v. Com'rs. of Durham*, 201 N. C. 233, 159 S. E. 439." It went on to say that:

"The precise question seems to be one of first impression, certainly in this jurisdiction, albeit some of the cases speak of 'segregation ordinances' as zoning ordinances, notably *City of Richmond v. Deans*, 4 Cir., 37 F. 2d 712, and *Allen v. Oklahoma City*, 175 Okl. 421, 52 P. 2d 1054. The case of *Bowen v. City of Atlanta*, 159 Ga. 145, 125 S. E. 199, dealt with a zoning ordinance, but the decision there was rested on authority of a segregation case.

"This Court held in 1914 that an ordinance providing for the segregation of the White and Negro races in the City of Winston-Salem was void for want of legislative sanction. *State v. Darnell*, 166 N. C. 300, 81 S. E. 338, 339, 51 L. R. A., N. S., 332. . . .

"It is conceded that the question posed by the record is one arising under the Federal Constitution and is to be determined by the

implications of the decisions of the court of last resort in the absence of a direct holding on the subject.

"In 1917 the Supreme Court of the United States had before it an ordinance of the City of Louisville, Ky., which forbade persons of one color 'to move into and occupy as a residence' a house in any block in which a majority of homes were already occupied by persons of the other color. This ordinance was held to be void in an action brought by a white man against a colored man for specific performance of contract to purchase a lot in a block where a majority of the residences were then occupied by white persons. The contract of purchase relieved the defendant from obligation to perform if he were not permitted under the law 'to occupy said property as a residence'.

"The court in deciding the case stated the broad question presented for determination to be: 'May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the states, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?' The question was answered in the negative. *Buchanan v. Warley*, 245 U. S. 60, 38 S. Ct. 16, 18, 62 L. Ed. 149, L. R. A. 1918C, 210, Ann. Cas. 1818A, 1201. ...

"We are presently concerned, as was the court in the *Buchanan* case, with municipal restrictions upon the use and occupancy of property as affected solely by the racial status of the proposed occupant. The matter is regarded as beyond the reach of the police power. *Booth v. Illinois*, 184 U. S. 425, 22 S. Ct. 425, 46 L. Ed. 623; *Otis v. Parker*, 187 U. S. 606, 23 S. Ct. 168, 47 L. Ed. 323. 'The reserved police power of the state must stop when it encroaches on the protection accorded the citizen by the Federal Constitution.' *Women's Kansas City St. Andrew Society v. Kansas City, Mo.*, 8 Cir., 58 F. 2d 593, 598.

"The right of the plaintiffs to test the disputed provision by injunction is not controverted. Indeed, there is ample precedent for the action. *Loose-Wiles Biscuit Co. v. Sanford*, 200 N. C. 467, 157 S. E. 432; *Dixie Poster Advertising Co. v. Asheville*, 189 N. C. 737, 128 S. E. 149. See, also, concurring opinions in *Turner v. New Bern*, 187 N. C. 541, 122 S. E., 469, and *Atlantic Coast Line R. R. v. Goldsboro*, 155 N. C. 356, 71 S. E. 514."

ADMINISTRATIVE ORDERS; REGULATIONS and OPINIONS

TAXATION

(I. T. 3360, Mar. 18, 1940, 8 Law Week 497)

Federal savings and loan associations are exempt from tax.

FSLAs are entitled to exemption from federal income taxation under Section 101(15) of the Internal Revenue Code, which accords exemption from such taxation to corporations which are instrumentalities of the United States and which, under the Act of Congress providing for their organization, are exempt from federal income taxes.

Section 5 of the HOL Act of 1933, which authorizes establishment of FSLAs, provides in subsection (h) that such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation imposed by the United States. The Secretary of the Treasury has designated FSLAs as fiscal agents of the United States for certain purposes, in accordance with the authorization in Section 5(k) of the HOL Act. In S.S.T. 62 (4 L W 811), the Bureau held that FSLAs are instrumentalities of the United States.

TAXATION - STAMP TAXES

(S. T. 897, Feb. 26, 1940, 8 Law Week 429)

Conveyance of realty to local housing authority, which is instrumentality of state or political subdivisions, is not subject to stamp tax.

Conveyance of realty to a local housing authority, which is an instrumentality of either a state or a political subdivision thereof, is not subject to stamp tax under Section 3482 of the Internal Revenue Code, as amended by Section 1 of the Revenue Act of 1939.

Although Article 94 of Regulations 71, which provides that deeds conveying to a state real estate purchased by it are not subject to tax, refers to conveyances to a state, "it is held that the scope of the article is not limited to a conveyance to the state itself but also includes conveyances to a corporate instrumentality of a state or a political subdivision thereof."

Public housing authorities or public corporate boards, separate and distinct from the state or political subdivisions thereof, are created pursuant to state law and are authorized to acquire land by eminent domain, and to undertake and operate projects for the clearance of slums and the construction of dwelling accommodations for persons of low income.

TAXATION - UNDISTRIBUTED PROFITS TAX

(I. T. 3361, Mar. 25, 1940 8 Law Week 564)

Corporation is entitled to credit for interest on bonds of HOLC in computing its adjusted net income.

A corporation in computing its "adjusted net income" for the purchase of the surtax on undistributed profits for the taxable years 1936 and 1937 is entitled to a credit under Section 14(a)1(B) of the Revenue Act of 1936 for the amount received as interest on bonds of the HOLC, irrespective of the provisions of the HOLC Act of 1933, as amended, which does not exempt the interest on such bonds from surtaxes.

The ruling in I.T.2873 (1935), that interest on obligations of the HOLC issued under the HOLC Act of 1933, as amended, is not exempt from surtax, is not applicable in determining, under Section 14 of the Revenue Act of 1936, the undistributed profits surtax liability of a corporation.

The corporation is entitled under Section 26(a) of the 1936 Revenue Act to the same credit allowed an individual under Section 25 (a)(1) and (2) for interest on obligations of an instrumentality of the United States whose authorizing act exempts such interest from normal tax. Section 4(c) of the HOLC Act of 1933 exempts bonds issued by the Corporation, both of principal and interest, from all taxation, except surtaxes, etc.

Other rules, regulations, and administrative orders affecting housing construction or finance agencies are as follows:

EXECUTIVE ORDER: The President: The President by an order No. 8361 filed March 4, amended Executive Order No. 6909 to make available for classification and use as a grazing project pursuant to Title III of the Bankhead-Jones Farm Tenant Act certain lands which had been withdrawn from settlement, location, sale, or entry. See 5 Fed. Reg. 951-2.

CIVIL SERVICE COMMISSION: Published a notice of the condition of the apportionment as of the close of business on March 15, 1940. See 5 Fed. Reg. 1118-1119.

FARM CREDIT ADMINISTRATION: The Land Bank Commissioner, by regulations filed March 14, amended the Code of Federal Regulations with regard to insurance requirements on Federal Land Bank and Land Bank Commissioner loans. See 5 Fed. Reg. 1059-60.

The Acting Governor, by regulations filed March 19, amended the Code of Federal Regulations with regard to the authority and order of precedence of the Deputy Governors, the Deputy Land Bank Commissioners and the Chief of the Appraisal Subdivision. See 5 Fed. Reg. 1103.

FARM SECURITY ADMINISTRATION: The Secretary of Agriculture, by a notice filed March 1, designated Mani County, Territory of Hawaii as an additional county in which loans could be made pursuant to Title I of the Bankhead-Jones Farm Tenant Act. See 5 Fed. Reg. 942.

FEDERAL HOME LOAN BANK BOARD: The FHLBB, by resolutions filed March 8, (1) amended the Rules and Regulations of the Federal Home Loan Bank System with regard to the borrowing capacity of a member and the scope of review of a member's line of credit, and (2) amended the Rules and Regulations of the FSLAs with regard to the necessity for notice to members of the annual meeting of members of a Federal association. See 5 Fed. Reg. 1012.

Federal Savings and Loan Associations.

The FHLBB, by a resolution filed on March 20, amended the Rules and Regulations of the FSLAs with regard to dissolution of a Federal savings and loan association. See 5 Fed. Reg. 1150.

Home Owners' Loan Corporation: The FHLBB, by resolution filed March 2, amended the Code of Federal Regulations with regard to the scope of authority of the Regional Managers. See 5 Fed. Reg. 885.

The FHLBB, by resolutions filed March 12, (1) authorized the Regional Manager to appoint deputies for the performance of any duties with respect to reconditioning operations; (2) amended a prior resolution with regard to the purchase of supplies and contracts for recurring services; and (3) provided for continued validity of tax transactions which were undertaken prior to the transfer of tax work to management. See 5 Fed. Reg. 1063, 4, 6.

The FHLBB, by resolutions filed March 12, (1) authorized the General Manager, subject to certain limitations, to incur expenses and approve compensation for credit reports; (2) prescribed the authority and responsibility of the (a) Analysis and Review Section, (b) Loan Service Division, and (c) Property Inspection Division. See 5 Fed. Reg. 1049, 50, 53.

The FHLBB, by resolutions filed March 15, (1) prescribed the personnel and functions of the Property Committee; (2) prescribed the condition on which sales would be made to relatives, partners, officers, and employees of the Corporation or an approved broker; (3) authorized the General Manager with the approval of the General Counsel to determine the plans of sale of certain real properties; and (4) provided certain restrictions on the classes of persons who may purchase acquired properties and the terms on which contract sales may be entered into with such persons. See 5 Fed. Reg. 1090-2.

The General Manager and General Counsel of the HOLC, by orders filed March 12, promulgated procedures (1) for the assignment and duties of fee inspectors; (2) for the execution of reconditioning contracts and the starting of work thereunder; (3) for the handling by the State Manager of recommendations for reconditioning or repairs; (4) for the handling of tax work; (5) for the return of rejected deposits and the action to be taken on uncollectible checks; (6) for the receipt of split payments, the notification to the debtor of uncollectible checks, etc.; (7) for the crediting of payments to a borrower in cases where there is a discrepancy between the written and numerical amounts shown on the receipt; (8) for collection offices and the authority of Field Representatives in making collections; (9) for the purchase of supplies, equipment and services not otherwise provided for; and (10) for the obtaining of bids for supplies and equipment from local concerns. See 5 Fed. Reg. 1063-7.

The General Manager and General Counsel promulgated procedures, filed March 12, (1) for the determination of which items are to be included in the Tax and Insurance Accounts in the various jurisdictions within the region and for the handling of such items which are unpaid; (2) for making advances for taxes, assessments and other levies and for the repayment thereof; (3) for the manner of payment of such taxes, assessments and other levies by the Corporation in certain cases; (4) for the furnishing of information by the tax section and the filing of returns; (5) for making advances for the purpose of repairs and reconditioning; (6) for the charging of home owners for advances made for taxes, assessments, and other levies; (7) for the conversion of installment contracts into mortgage accounts; (8) for the investigating of the credit standing of prospective tenants; (9) for the manner of dealing with delinquent tenants; (10) for the payment of bills incurred by brokers; and (11) for the making of appraisals upon applications for partial releases. See 5 Fed. Reg. 1050-6.

FEDERAL HOUSING ADMINISTRATION: The Administrator, by order filed March 14, provided for the acquisition of properties acquired by an insured institution. See 5 Fed. Reg. 1067.

The Administrator, by orders filed March 11, prescribed Administrative Rules and Regulations with regard to large scale projects (mortgages in excess of \$100,000) for implementing section 207 of the National Housing Act. See 5 Fed. Reg. 1031-1046.

The Acting Administrator, with the approval of the Acting Secretary of the Treasury, on March 29 filed a notice of the call for redemption of certain designated Mutual Mortgage Insurance Fund debentures. See 5 Fed. Reg. 1252.

RURAL ELECTRIFICATION ADMINISTRATION: The Acting Administrator, by order filed March 8, amended certain previous Administrative Orders with regard to certain Ohio projects therein designated. See 5 Fed. Reg. 1005.

The Acting Administrator, by orders filed March 22, amended previous Administrative Orders with regard to the allocation of funds to designated projects. See 5 Fed. Reg. 1179-1180.

The Acting Administrator, by orders filed March 22, allocated funds for certain designated projects in Georgia, Mississippi, Indiana, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Texas, Utah, Wisconsin, Arkansas, Nebraska, Wyoming, New Jersey, South Carolina, Tennessee, and Virginia. See 5 Fed. Reg. 1180.

LEGISLATION

FederalFARM CREDIT ADMINISTRATION:

- S. 3480.- Mr. Gillette and Others March 4, 1940. Act of 1940. Creates the FCA, under the direction of the Federal Farm Credit Board also created. The present FCA, the FPMC, and the offices of Governor of the FCA, Land Bank Commissioner, Production Credit Commissioner, Cooperative Bank Commissioner and Intermediate Credit Commissioner, are abolished and their personnel and functions (except those relating to loans for crop production and harvesting) are transferred to the Federal Credit Board as are the duties of the Secretary of Agriculture with respect to these agencies.
- S. 3509 - Messrs. Wheeler, Bankhead, and LaFollette March 4, 1940. Farm Credit land bank and LBC loans made prior to June 30, 1946, and after that date the rate shall be fixed by the Governor of the FCA; guarantees unconditionally all farm-loan bonds by the United States, but no such bonds shall be issued in excess of the assets of the FLBs; provides for refinancing all farm-loan bonds which bear interest at a rate higher than the average rate of interest of other United States obligations; removes the requirement that borrowers subscribe to the capital stock of FLBs or NFLAs and provides for the retirement of such capital stock; increases the functions and responsibilities of NFLAs and county committees of farmers in respect of debt adjustment or refinancing proceedings between farm debtors and their creditors; provides for the refinancing of farm-mortgage debts over a period of 40 years; allows repurchase of foreclosed property and reamortization over a period of 40 years; limits the institution of foreclosure proceedings and the taking of deficiency judgments.
- S. 3588 - Mr. Andrews March 14, 1940. Provides that the laws relating to farm loans, etc., shall apply to persons engaged in horticultural and floricultural activities if they are the owner or lessee of land used therein, if they engage in such activities on such land, or if they derive

the principal part of their income from such activities, etc.

H.R. 8748 - Mr. Jones of Texas

March 1, 1940. FC Act of 1940. Reduces to 3 per cent the interest rates on FLB and LBC loans made prior to June 30, 1946, and after that date

the rate shall be fixed by the Governor of the FCA; guarantees unconditionally all farm-loan bonds by the United States, but no such bonds shall be issued in excess of the assets of the FLBs; provides for refinancing all farm-loan bonds which bear interest at a rate higher than the average rate of interest of other United States obligations; removes the requirement that borrowers subscribe to the capital stock of FLBs or NFLAs and provides for the retirement of such capital stock; increases the functions and responsibilities of NFLAs and county committees of farmers in respect of debt adjustment or refinancing proceedings between farm debtors and their creditors; provides for the refinancing of farm-mortgage debts over a period of 40 years; allows repurchase of fore-closed property and reammortization over a period of 40 years; limits the institution of foreclosure proceedings and the taking of deficiency judgments.

H.R. 8825 - Mr. Kleberg

March 7, 1940. FC Act of 1940.

Creates the FCA under the direction of the Federal Farm Credit Board also created. The present FCA, the FFMC, and the offices of Governor of the FCA, Land Bank Commissioner, Production Credit Commissioner, Cooperative Bank Commissioner, and Intermediate Credit Commissioner, are abolished and their personnel and functions (except those relating to loans for crop production and harvesting) are transferred to the Federal Credit Board as are the duties of the Secretary of Agriculture with respect to those agencies.

H.R. 8837 - Mr. Brewster

March 11, 1940. FC Act of 1940.

Creates the FCA, under the direction of the Federal Farm Credit Board also created. The present FCA, the FFMC, and the offices of Governor of the FCA, Land Bank Commissioner, Production Credit Commissioner, Cooperative Bank Commissioner and Intermediate Credit Commissioner, are abolished and their personnel and functions (except those relating to loans for crop production and harvesting) are transferred to the Federal Credit Board as are the duties of the Secretary of Agriculture with respect to these agencies.

FEDERAL HOUSING ADMINISTRATION:

S. 3584 - Mr. Burke March 14, 1940. Authorizes the Administrator of the FHA to insure banks, trust companies, etc., against loss on loans for the purchase and installation of irrigation systems on farm lands (amending U.S.C., Sup. 12: 1703(a), (b)).

RECONSTRUCTION FINANCE CORPORATION:

S. 3513 - Mr. Barbour March 4, 1940. Extends the authority of the RFC, under U.S.C. 15: 606a, to permit the making of loans on or the purchase of the assets of closed building and loan associations which have been held for the benefit of shareholders, members, or depositors.

StateHOUSING:

California: A.B. 57 (Spec.Sess.) (Passed in House. Referred to Committee on Finance, Revenue, and Taxation in Senate.) To create a State Housing Authority to clear slums and construct and operate dwelling projects for persons of low income. The Authority is empowered to perform any operation necessary and incidental to carrying out its functions including the acquisition of property, borrowing money, issuing bonds. The property and securities of the Authority are exempt from taxation and assessment but payments may be made in lieu of such taxes or assessments.

A.C.R. 16 (Spec.Sess.) (Adopted by House; Referred to Committee on Social Problems in Senate.)
The State Planning Board is requested to make a complete investigation: (a) as to what extent there is a need for a program of clearance of unsafe and insanitary dwellings and of construction of safe and sanitary dwelling accommodations to relieve conditions of overcrowding and congestion in California.

(b) as to what extent such a need exists among any class or group of the population of this State, dwellers in urban or rural areas, or settled or migratory groups.

(c) as to what extent the housing acts enacted at the extraordinary session of the Fifty-second Legislature of this State in 1938, Chapters 1, 2, and 4 of the Statutes of 1938, are adequate fully to cope with any situation and conditions found by the State Planning Board to exist relative to overcrowding and congestion; and to what extent clearance and construction by a State public agency would be necessary or useful in eliminating such conditions, if existent.

(d) in the event that such a need for clearance and construction exists, in what regions of the State and under what conditions and to what extent such a program of clearance and construction should be carried out.

(e) whether, and to what extent if at all, such a program of clearance and construction would develop the natural and economic resources of the State, and whether such projects would be of benefit to the areas in which they were undertaken and to the State.

LEGAL COMMENT

THE SHERMAN ANTITRUST ACT AND ITS ENFORCEMENT (Symposium).
Law and Contemporary Problems. Duke University School of
Law, Vol. VII, No. 1 (Winter 1940)

Acknowledgments are made to Duke University School of Law
and to the Department of Justice for permission to digest
and to quote in part as found necessary.

Twelve articles on legal and economic problems relevant to the Sherman Antitrust Act and its enforcement, which, incidentally, give considerable information concerning the activities of the Antitrust Division of the Department of Justice in connection with the present investigation and enforcement activities in the field of housing, are contained in the above symposium. The articles were prepared by Assistant Attorney General Thurman Arnold and members of the staff of the Antitrust Division of the Department of Justice. They are as follows: Antitrust Law Enforcement, Past and Future, Thurman Arnold; Common Right, Due Process and Antitrust, Walton Hamilton; The Application of the Sherman Act to "Integrated" and "Loose" Industrial Combinations, Charles H. Weston; Price Leadership, George P. Comer; Patents and the New Trust Problem, Joseph Borkin; Antitrust Labor Problems: Law and Policy, Edward H. Miller; Complaints of Antitrust Law Violations and Their Investigation: I. The Work of the Complaints Section of the Antitrust Division, Edward P. Hodges; II. The Selection of Cases for Major Investigations, Fowler Hamilton; III. Processes in the Investigation of Complaints, Charles L. Terrel; Remedies Available to the Government Under the Sherman Act, Wendell Berge; The Conduct of Grand Jury Proceedings in Antitrust Cases, John Henry Lewin; and Trial Technique in Antitrust Cases, Walter L. Rice.

Antitrust Law Enforcement, Past and Future. Thurman Arnold,
Assistant Attorney General of the United States in charge of
the Antitrust Division of the Department of Justice.
pp. 5-23.

Assistant Attorney General Arnold's article analyzes basic economic problems with which the antitrust laws were designed to deal.

The Sections of his article dealing with housing problems are as follows:

"With families on the verge of starvation, we have been everywhere confronted with idle machinery and idle labor, because the prices at which goods were sold had no relation to their distribution. This has not been a condition which came upon us suddenly. It had a long progressive development. According to figures prepared by the Brookings Institution, the amount of goods we actually produced from 1922 to 1933 fell short of the amount which we might have produced by an efficient use of our machinery and labor by the colossal sum of 248 billion dollars. There are slightly less than thirty million families in our population. Had we been able to utilize our productive capacity, each of these families could have had eight thousand dollars more in food, clothing, and housing--a sum greater than 87% of the families in the United States could save in a lifetime."

"But what have the antitrust laws to do with the distribution of goods? Why should a law which has been consistently ignored for half a century suddenly become the center of such intense public concern? The Sherman Act has never before been an important economic factor. Its chief function has consisted not in preserving competition itself but in dramatizing the ideal of competition. Why, then, should it suddenly be forced into the limelight at this particular time?

"In the antitrust laws is found the only expression of our competitive ideals which we now have. Just as the Supreme Court represents the ideal of the rule of law, so do the institutions which center around the antitrust laws represent the ideal of a society of independent competing business men and farmers. This is what we call a Democracy. Abandonment of the competitive ideal in favor of a centralized economic structure seems to us to be the abandonment of Democracy. It is my conviction that if we do not center the development of tomorrow around the ideal expressed in the Sherman Act, ineffective though that ideal may have been in the past as a practical agency, the last obstacle to complete industrial autocracy will have disappeared. We will be on our way to an economic organization which follows the line of Germany rather than that of Sweden."

"The enforcement of the antitrust laws in the past has been a series of crusades. This is an accurate description. A crusade is concerned more with the dramatization of an ideal than with continuous practical control. So long as the personnel of the Department is so small that violations of the antitrust laws must be ignored, because there is no one to investigate them or try the violators, we have no practical control of the situation. With such an enforcement organization, antitrust

cases must be selected on the basis of their relative importance while the vast mine-run of offenders are permitted to go their way unmolested. But to obtain a policing force adequate to accomplish economic results there must be public understanding and support. The antitrust problem must be brought to the public and not reserved for the abstract consideration of the lawyer or the economist."

"What has happened in this country is that a number of groups have gotten into control of what I have called economic toll bridges which enables them to impose charges on others who have to pass over them to buy or sell their goods. These toll bridges are of many different kinds. Not all of them are illegal, but each of them gives the owner of the toll bridge the power to coerce and to tax others. To give a picture of the problem, I shall list some of the typical practices of the building industries which have been found in recent government proceedings or investigations or are involved in substantial complaints to the Antitrust Division.

"Producers of building materials have fixed prices either by private arrangement or as the principal activity of trade associations. Owners of patents on building materials have used them to establish restrictive structures of price control, control of sales methods, and limits upon the quantities sold, in direct contradiction of the broad intent of the patent laws to encourage, through inventions, the development and spread of new productive methods. In some groups the various producers have subscribed to the theory that every member of the industry should have a definite share of whatever business there is to be done, and that no concern should try to get more than its share by price competition.

"Various groups of distributors of building materials engage in two kinds of restrictive practices. First, they try to raise the price of their services by establishing a fixed mark-up between the price they pay the manufacturer and the price at which they resell. For this purpose they collusively determine their mark-up or their selling price, and sometimes agree among themselves to boycott manufacturers who will not cut off supplies from price-cutting distributors. Sometimes they conspire with manufacturers' groups to establish a joint price control binding upon the manufacturers' and the distributors' organizations alike.

"Contractors who erect buildings add their own systems of restraint. Many contracting groups maintain bid depositories in which copies of all bids and estimates are supposed to be filed prior to the award of the contract. In some of these depositories the bids are opened before the contract is let and the information thus obtained is used to coerce low bidders to withdraw or raise their bids. Other contractor groups maintain central estimating bureaus which calculate the

cost of the job and supply the various contractors with the bids they are to make. Some bidding rings determine in advance which contractor is to get the job and arrange their bids so that everyone else bids higher than he. In addition to these efforts to control their charges for services, many of these groups set up little closed markets from which they exclude outside contractors or new types of services.

"The building trades unions often participate in these policies of restraint and add new restraints of their own. In recent years they have frequently been used as the strong-arm squads for collusive agreements among contractors, refusing to supply labor where the contractors' ring wishes labor withhold. In other cases the unions themselves have refused to permit the use of new products or new processes because of their fear that the new method might make it possible to erect a house with fewer hours of labor than the old.

"Such practices crystallize and lead to legislative restraints on trade. Many building regulations are, in reality, protective tariffs. The licensing and registration of contractors by boards of contractors affords a ready means of discipline over contractors. One statute applies a method of rating bidders according to vague standards interpreted by the contractors themselves. It then puts handicaps on out of the state contractors and out of the state products. This is not an isolated example. Yet on top of such legislative restrictions must be added municipal ordinances designed to restrain competition. They start out from the fact that there must be protection from fire and safeguards of minimum health requirements. They develop into legally established boycotts, particularly relating to walls, roofs, electrical work, and plumbing."

"Most important in the effective, constructive enforcement of the Sherman Act is the application of the Rule of Reason with respect to combinations in restraint of trade. This Rule envisages three situations in which a rigid application of competitive standards is not possible, under the economic necessities of a machine age:

1. Combinations which actually contribute to the efficiency of mass production should not be destroyed.
2. Concerted action on the part of groups of competitors in order to insure orderly marketing conditions should not be considered unreasonable.
3. Where competition has been destroyed mere imposition of penalties does not re-create it. Economic dislocation in great industries must be avoided.

"These principles have no meaning except when applied to concrete situations; the reasonableness of combination can not be determined in the abstract. A case by case adjustment between the techniques of mass production on the one hand and free competition on the other is the only method by which reasonable and fair enforcement of the anti-trust laws can be effected. More imposition of penalties is often insufficient. Where the facts of any industrial situation make a particular combination reasonable, the civil procedure should be used as a means of settling the question and to give business men a guide. This is not a regulation of what business must do, but a clarification of what business may do. The great advantage of applying the Rule of Reason is that it allows us to take up one problem at a time in the light of its particular facts. This is the only way of avoiding the pitfalls of general regulation and permanent social planning."

"An essential complement to the case method of clarifying the law is the use of public statements, to explain the decisions and attitudes of the Department of Justice in the selection and prosecution of each case.

"This policy was officially announced by Attorney General Cummings on May 18, 1938:

'The aim of these statements in connection with any particular proceeding or investigation is to serve (1) as a guide to businessmen who seek information on the probable action of this Department in similar circumstances; (2) to aid the Department itself in formulating a consistent policy of antitrust law enforcement; (3) to serve as a warning to those engaged in similar illegal practices; and (4) to call the attention of the Congress to the interpretation and application of antitrust laws by the Attorney General, as they may have a bearing upon contemplated legislation ...

'In general, the statements will cover (1) the conditions which the Department believes to exist in the particular industry which create monopolistic control or restraint of trade; (2) the reason why the particular procedure was followed, whether a civil suit, consent decree, criminal prosecution, acceptance of pleas of nolo contendere, or dismissal of the proceeding; and (3) the economic results which are to be expected from its action in the particular case.'

"With present personnel, there is no way that I know of to avoid the use of discretion and judgment in the conduct of the Antitrust Division. All complaints can not be prosecuted. A selection must be made. Therefore, the grounds underlying that selection should be publicly stated in each case to the end that a consistent and open policy of prosecution may gradually be derived from statements in connection with individual cases."

"Whatever the legal remedy invoked, the first requirement for efficient prosecution is to proceed against every combination which is blocking the distribution of a product from the raw material to the consumer. Combinations exist at every stage of the industrial process. An aggressive combination compels others to combine in defense. Indeed it is often as difficult to find out who is the moral culprit as to define the term 'aggressor' in international law. One frequently finds business men in an industry who are unable to survive without following established practices which are in violation of the law. Within a single industrial field, to attack one of a series of combinations and leave others alone is simply to give an advantage to those who do not happen to be investigated. We must take such related combinations up all at once if we are to produce economically desirable results.

"We have done this in milk; we have done it in fertilizer. But perhaps the best example is an industrial problem which is in the forefront of all other industrial problems. A house is the product of a tangle of goods and services. No one who furnishes any single element which goes into the completed product can greatly raise or lower the cost of the whole product. Neither a single heavy industry, nor the distributors of its products, nor the contractors who install them, nor the labor which works on them, operating alone, can by vigorously competing do anything more than handicap themselves for the advantage of others. Like a number of dogs who have hold of the same piece of meat, none of them dares drop it because he would lose out completely. This is an analysis by way of figure of speech. Suppose we make it more concrete. It means that no major economic purpose can be attained by pursuing a labor union in Los Angeles, a group of contractors in Chicago, and a heavy industry in New York for antitrust violations in the building field. Of course it is our duty to prosecute complaints, and isolated prosecutions may protect particular competitors from injury. But the economic results in housing can only be accomplished by prosecuting on a nation-wide scale, and simultaneously, the various combinations which are creating the log jam in the building industry.

"The Antitrust Division's investigation of the building industry is just reaching the prosecution stage, yet already evidence is rapidly accumulating which shows what may be accomplished when there is an attempt to investigate and prosecute on a nation-wide scale all the illegal restraints existing in a particular industry, from the producer to the ultimate consumer. Congress had provided funds which made available 80 men for the investigation. We made preliminary surveys in 26 cities. Limited personnel and travel funds compelled us to postpone more intensive investigation in half of these cities. Grand jury proceedings have been instituted in many of them and now indictments are beginning to be returned.

"Our experiences in this building investigation have resulted in several discoveries which make it useful as a pattern for an extension of this type of activity to the problem of the distribution of other products to the ultimate consumer. We have discovered that vigorous investigation brings results beyond the actual cases that are prosecuted. These results spring from a realization by those engaged in the industry that an actual hazard exists if they violate the law. In investigating the building trades we are not dealing primarily with the criminal class of our population. We are dealing with ordinary law-abiding citizens who are caught in a vicious system which they are incapable of overturning without the aid of the Government. The presence in a city of an organization engaged in antitrust investigational work gives to those law-abiding elements in an industry an assurance that they will not be forced into illegal practices through the necessity of protecting themselves against the unlawful aggressions of others, or through fear of retaliation. The presence of our investigators, therefore, in and of itself, has been sufficient to stop illegal practices. In one city, for example, since our investigation began, lumber prices have dropped 18% and sand and gravel prices have declined 22%. The low bid on a large electrical contract which was readvertised was 21% under the previous low bid.

"A second discovery we have made is that when there is an honest effort to prosecute impartially every unreasonable restraint affecting building costs, whether it comes from manufacturers, contractors, or labor, most of the criticism and misunderstanding as to our purposes disappear and we get adequate public support. The public understands the reasons for our action in the building industry. They have been brought down from the realm of abstract law. I do not know of a single city in which our building investigation has been carried on that public support has not been forthcoming.

"A third discovery is that a staff in the field equipped to investigate thoroughly the complaints in a given locality, obtains an amazing amount of voluntary assistance from groups who otherwise might not have taken the initiative to complain. A display of activity invariably causes businessmen and consumers who have been the victims of improper practices to take heart and offer their active cooperation. In one large city, for example, there were a number of bid depositories operating in a way which we considered to be in restraint of trade. The members of these depositories were interviewed by our investigators. In a short time everyone of them informed us that he was ceasing the practice we were investigating. This was done before we had developed any case against them. They told us they were doing it because they believed that if other unlawful restraints were cleared away from the building industry they would be better off without these depositories. Although it would be unfair to announce public-

ly the names of the individuals concerned or the city where this happened, I think I can safely say that this is typical of what is happening in many places.

"A fourth discovery is that these results will not be permanent, in building or any other industry, if the staff is withdrawn. If we were to withdraw our investigators from any locality where we have already accomplished beneficial results, it is almost certain that within a year the old abuses would reappear. As we have often asserted, the problem is similar to that of controlling traffic. There must be a traffic policeman on a crowded corner. If the policeman is there the law will be obeyed. If we have an adequate staff in the field to receive and investigate complaints we will get the complaints and the investigations will accomplish beneficial results. If the men are not there, nothing will happen and the consumers will get discouraged and the law will be ignored. It is this fact which gives special importance to the plan of organization presented in the concluding section of this article.

"Before I attempt to outline this plan of organization, I wish to show how war had added to the task of the Antitrust Division. This is essential, for the outbreak of war in Europe was immediately followed in this country by an outbreak of funeral orations over antitrust enforcement. All those who love a military organization in society announced that it was time to ignore the antitrust laws."

"We are still suffering from the effects of the housing shortage of the last war, during which activity in the housing field practically ceased. A further cessation of construction activity will result in a housing shortage of unprecedented severity. Such capital as now stands ready for investment in housing can easily be discouraged by high construction costs, when it is presented with the attractive picture of great profits in war industries. Thus we will be paving the way to another post war economic collapse in the future while we are depriving ourselves of needed dwellings today.

"The housing industry offers the greatest opportunity of non-war industry to prevent an economic unbalance. It is imperative that we do not allow a new housing shortage to be superimposed on the one which we now have. Therefore, speaking strictly for the present, we need houses for their own sake. We also need to build them to provide an industrial balance wheel for the troubled times ahead. In such a situation it becomes the clear duty of the Antitrust Division to investigate and attack all of the restraints which handicap construction."

"The experience gained in the building investigation, coupled with that obtained in the months during which the Temporary National

Economic Committee has been sitting, provides the basis for a plan of organization which would permit the Antitrust Division to cope with its rapidly expanding war-time duties and which would also furnish far more effective peace-time machinery for enforcing the antitrust laws than has heretofore existed. I have recently presented our desired program at hearings before the Temporary National Economic Committee. So far as the Antitrust Division's participation is concerned, the plan requires two things:

1. An adequate prosecuting group sufficient to break up the organizations imposing restraints, which can be withdrawn after the prosecutions are over; and,

2. One or two men assigned permanently in each state to preserve the gains by hearing complaints and keeping in close contact with the situation."

The total annual appropriation for all these activities for the Antitrust Division and the Temporary National Economic Committee as a permanent body would not exceed two million dollars. That sum, of course, is in addition to the present appropriation allocated to the Antitrust Division. We are about to spend nearly two billion dollars a year on armaments alone. The type of organization outlined herein would permit effective control within reasonable limits of prices, and save millions annually to consumers. Moreover, it is most important that wherever government subsidies are granted to any industry, the industry be cleared of the restraints which prevent experimental competitive development and increased volume so that these subsidies will not be the means of establishing even more firmly in power aggressive organizations with arbitrary control of prices. Government spending without antitrust enforcement is simply the distribution of bonuses to a favored few.

"A permanent organization capable of enforcing the antitrust laws through the cooperation and understanding of business, labor, agricultural organizations and consumer will provide an even, steady, fair and consistent application of their principles in cooperation with private organizations. Such an organization will reestablish consumer sovereignty in this country. It will give the rank and file of the members of every industry the benefits that can come from freedom of independent enterprise. It will give the rank and file of labor protection from exploitation by small groups who do not have the interests of labor at heart and develop, case by case, the freedom of labor to organize for legitimate labor disputes.

"The Sherman Act is America's contribution to economic legislation. The question before the American people is whether they want to

save their competitive system. If so, it will not be done by attacking the morals of the businessmen who have been thrown into a 'free for all' fight without enough referees present at the battles. It will be done only if an enforcement organization is built up, with regional offices and a personnel sufficient to investigate and prosecute all violations instead of some of them."

Common Right, Due Process and Antitrust. Walton Hamilton, Special Assistant to the Attorney General, Antitrust Division, Department of Justice. pp. 24-41.

"The Sherman Act is the great charter of American industry. It is the elementary ordinance about which the pattern of the public control of business has been woven. Over the centuries this fabric of control has been woven. Public policy, the common law, usages of trade, statutes of the realm, opinion popular and unpopular, decrees of judges have all left their impress upon it. As industry has evolved, as necessities have become evident, as ways of thought have changed, the process has continued. The larger adjustment has been made by the legislature; the detail has been worked out by the courts."

"It one must be technical, the Sherman Act dates from 1890. Senator Hoar--who drafted the measure that bears the name of his colleague from Ohio--stated that 'we have affirmed the old doctrine of the common law in regard to all interstate and international transactions'. Later, in debate, he remarked, 'the great thing that this bill does, except affording a remedy, is to extend to the federal jurisdiction the common law principles which protected fair competition in trade in old times in England!'"

"The bill repeated, rather than created, the law. Its principle hailed from the days of petty trade, its intent was to impose upon business the rule of competition. Its focus is a term of art, 'restraint of trade', which has a clear legal significance. Its lines of legality, its range of offenses, its prohibitions upon conduct are all those of the common law. Its formal declaration was deemed necessary only because Congress believed that there was no common law of the United States."

"The rule against restraints was not a creation of business enterprise. It took the shape in a society dominated by petty trade. It came from days in which a pecuniary economy was in its early stages, the corporation little used, the techniques of acquisition still elementary, profits not yet an avowed end of adventure. The workaday world was still of the arts; the enterpriser, still a craftsman, was intent

upon making a fair living for himself. Initially the rule had only a secondary concern with good, commodity, ware of trade. In a society ruled by handicraft, it is the skill of men of various trades which is of dominant concern at law and in public policy."

"Little by little such initial steps were broadened into 'the liberty of the subject to pursue lawful and established trades'. At the common law 'no man could be prohibited from working at any lawful trade, for the law abhors idleness, the mother of all evil'; nor does the common law compel 'the artificers and people of mystery' to 'hold themselves everyone to one mystery' and 'to no other than that which he has chosen'. In fact the enjoyment of 'a whole trade' by an individual is 'malum in se', so contrary to the common law that it cannot be justified even by a royal patent of monopoly.

"The doctrine of 'the common right' to the unmolested pursuit of a calling found an easy foothold in America. The Fourteenth Amendment brought the common right into federal law. Here, as in England, it was first asserted against a formal grant of monopoly. A reconstruction legislature of Louisiana dominated by carpet-baggers had conferred upon a chartered company a monopoly in the slaughtering of cattle. The butchers, robbed of their occupation, appealed to the courts. In their behalf it was argued that the act of the state, by the denial of their right to their calling, had abridged their 'privileges and immunities' as 'citizens of the United States'. The Court was unwilling as yet to go so far and by the closest of margins rejected the contention. But an issue had been raised which would not down and presently had to be decided all over. The butchers, whose plea had been rejected by the Court, appealed to the legislature and secured the repeal of the obnoxious charter. With fortunes of war and arguments reversed, it was this time the chartered company which appealed to the judiciary. Again 'the opinion of the court' stood by the legislature. But two justices, who had dissented before, now concurred in the result. They argued, not that the second act of the legislature was valid, but that the first all along had been invalid. It would, however, not do to revive the rhetoric of privileges and immunities; so the common right of every man to his trade was tucked neatly away within the clause which forbids a state to deny or abridge life, liberty, or property, 'without due process of law'."

"The sweep of doctrine appears in epitome in the famous bake-shop case. A statute of New York limited the hours of workers in bake-shops to ten in any one day. This act the Court, speaking through Mr. Justice Peckham, found to be a deprivation of liberty and property without due process of law. The rhetoric of the opinion is almost that of the law; the underlying logic, which directs the argument straight to its goal, is wholly that of economic faith. To the spokesman for the bench

the state legislature is an irresponsible monarch; the statute-in-question, a grant of immunity; the bakers, the beneficiary of privilege. Upon all these the Court, armed with a statute of monopolies tucked away within the Fourteenth Amendment, righteously descends. The gist of the reasoning is that there is in the record not one scintilla of evidence to indicate that bakers are not like other men--adult males quite able to take care of their own interests in the bargaining process. To Mr. Justice Peckham, and the four brethren who were in agreement, the dominant point was the lack of a demonstration that in respect to the safeguarding of health the mechanism of free contract was not adequate."

"Even within a few years a weakness in bargaining position ceases to be relevant or comes to be regarded as an attribute of property. The shift in reference from the system of free competition to the authority of 'this court' is clearly apparent in the Reports."

"The doctrine had drifted far from the reasons that had called it into being. It was no longer argued that the affairs of industry had best be left to freedom of contract between interested parties operating under a system of competition. Instead the disposition was to place the ordinary arrangements of business in a domain marked out by due process as beyond legislative control. The arrangements of the market place had now been committed into the rights of property. A doctrine derived from the law against monopoly became a check upon the police power of the state. A sanction invoked to outlaw privilege remained to enthrone it."

"So radical a position was not to be held. It was from the first compromised in the failure of the whole court to go along. The call to retreat was sounded long before the philosophy set down in dicta had been realized in holdings. In the very statement of a freedom of contract--now grounded in the equities of property rather than derived from the forces of competition--there were three sources of weakness rather too close to the surface of the dialectic to be kept hidden. The first was the instrumental character of the material out of which the theory of legislative impotence had been fashioned. Its underlying assumption was, not that business was not affected with a public interest, but that competition provided a system of regulation more effective than the government could devise. When agency was forgotten and competition degenerated into laissez faire, the edifice began to crumble. The second was that in invoking a usage of the ancient law, another usage of the ancient law was overlooked. As old as the right of the individual to his calling was the right of the state to regulate. It found expression in ordinance, assize, statute, in the judicial notion that price should be reasonable. In the concern of the government for health, safety, morals, a police power had been too deeply embedded in the law to be forgotten. The third was the curious paradox which attended the development of the

due process. So long as the appeal was from the legislature to freedom of contract as an agency of social justice, the doctrine was functional. As soon as competition was forgotten, and freedom from legislative oversight became an attribute of property, the function was lost."

"In a campaign that ran through many battles, the older sanction of the police power was set against a novel immunity in due process. In the struggle fortune was changeable; each doctrine had its crescendo and its diminuendo; a rapid surge might be followed by a violent reaction. But even judges of sternest convictions could not stand forever against the instant beat of an industrialism, too turbulent to give order, too violent to do justice between parties, headed it knew not whither. Legislation as an instrument of control might be checked; it could not be outlawed.

"As act took its place beside act, the simple lines of the competitive design dominated the complicated pattern which emerged. There was no idea of abridging the common right to a calling, of denying freedom of contract, of deflecting 'private enterprise' from its orbit. The thought was rather to adjust the system of competition to the shortcomings which experience had revealed. The norms of 'fair' and 'unfair' were evoked, and in the Clayton Act the Congress wrote, and in the Robinson-Patman Act revised, rules of the game for the competitive struggle."

"Accordingly a simple rationale relates the Sherman Act to other statutes and draws various measures for the regulation of industry into an articulate whole. The hub from which the pattern of control radiates is the general rule against restraints. Its ban rests upon all persons; its prohibition lies against every act of the type at which it is aimed. It has no distinctive domain, no area of the national economy is exempt from its operation; the members of no class, caste, group are saved from its command. Like trespass, assault, deceit, wanton negligence, it is an offense of which any person may be guilty. The rule against restraints, like all wrongs recognized at common law, is universal in its sweep."

"When the Sherman Act was being debated, it was understood that its prohibitions were personal and general; that exception and limitation are created only by legislative act. As the statute took shape, questions of the immunity of laborers and of farmers in respect to certain forms of collective activity were repeatedly raised. At one time an immunity was written into the bill in favor of a process of collective bargaining whose objectives were to lower hours and to raise wages. A similar amendment excepted farmers' cooperatives in activities concerned with 'the primary scale of their products'. As the current Act was

shaped by the Judiciary Committee, they went down with the bill into which they had been incorporated."

"In the whole structure of legislation, there is little of recognized privilege or of immunity from the general law. The seeming exceptions, under examination, turn out to be no more than departures to effect adjustments of the common rule to distinctive circumstances. These departures fall roughly into two distinct classes: (1) the provision of some agency of public interest where circumstance renders competition an undependable instrument and (2) the indulgence of a limited collective activity to groups whose individual members are in a bargaining position inferior to that of the parties with whom they must deal. Laborers and farmers habitually accept contracts whose terms they have little power to shape. Legislation concerned with collective bargaining and cooperative marketing aims to help the worker and the farmer up to the plane upon which competition is presumed to do its work. But it is from such a plane that monopoly, combination, conspiracy reaches up after that which is illegal. The very statutes, which attempt to elevate weaker groups to the competitive plane, seek by the most express commands to hold them there. Rarely has a rule of the general law been so zealously guarded against exception and immunity. "

"The Sherman Act is thus in accord with the great American tradition. Callings are by law open to all; men have a right to buy and sell in a free and open market. Yet the competitive system is not the ultimate word in industrial order; nor is it a definitive answer to all the problems of the national economy. Already an elaborate structure of statutes testifies to its shortcomings in operation. It may be that in the near future we must seriously depart from its pattern to serve the public interest. But, even in modification and departure, the norm of social justice embodied in the rule against restraints may not cease to be a guide. In any venture into regulation every party has a right to insist that it be accorded an equivalent for the protection of the open market which he is called upon to surrender. In a world where the unknown crowds upon us, public policy can have no enduring ultimate. For its guidance we may discover a more reasonable scheme of values than we now know. But until that time, the objectives of the common right and the Sherman Act must continue to direct. However the pattern of industrial government is modified, the ideal they embody will remain the reference for economic justice."

The Application of the Sherman Act to "Integrated" and "Loose" Industrial Combinations. Charles H. Weston, Special Assistant to the Attorney General, Antitrust Division, Department of Justice. pp. 42-60

"The decisions construing the Sherman Act may be roughly classified under two headings--those involving integrated combinations and those involving loose combinations. By integrated combinations is meant those where the restraint of monopolization of commerce flows from the possession or acquisition of property rights. This group includes all cases where two or more independent concerns are brought under common ownership or control by an acquisition of stock or assets; all mergers or consolidations; and all cases where a corporation and its subsidiaries and affiliates possess power to exercise monopolistic control over prices or otherwise to restrain trade and commerce, irrespective of any recent direct absorption of competitors. Loose combinations embrace all instances where concerns not linked together by common property interests either agree to suppress competition among themselves or agree to unite in imposing restrictions upon the activities of third persons. Cases involving trade associations are, of course, typical of this group.

"In connection with this classification, it is interesting to note the shift which has occurred in the relative importance of the two types of combination. In the early days of the Sherman Act, the great antitrust cases were, for the most part, cases of integrated combinations. In contrast, not a single case of an integrated combination has come before the Supreme Court during the last ten years."

"There is one general difference between cases of integrated combinations and those of loose combinations which may be noted at the outset. In loose combination cases the Court has repeatedly declared that while the intent of the parties may be relevant to the question of the nature or character of the restraint, such intent is irrelevant to the legality of the restraint. In the integrated combination cases on the other hand, intent or purpose has been considered as being in itself one of the principal factors determinative of the legality of the restraint."

"The chief factors given consideration in integrated combination cases seem reasonably clear. Without attempting to enumerate them in order of importance they are: (1) elimination of substantial competition through union of competitors or absorption of competitors; (2) possession of a position of dominance in the industry (dominance is apparently not to be tested by mere percentage of control, but turns upon whether or not there exist substantial outside competitors and whether, irrespective of substantial outside competitors, the combination has the

power to exact a monopolistic price for its products, a price above that which would prevail if prices were determined by competition among free and independent sellers); (3) intent to attain such a position of dominance or intent to exclude competitors, as manifested by absorption of competitors or by use of unfair tactics against them; and (4) use of the dominant position, when attained, to suppress competition either by coercive or oppressive tactics directed against competitors, or by agreements not to compete."

"Generally speaking, the restraints imposed by loose combinations are of two kinds, those that are self-imposed, where two or more persons combine to limit their own competition, and those that are coercive, where two or more persons take common action against a third person in order to influence or control the latter's conduct. The two types of restraints are quite distinct, although they may both spring from the same combination. Thus, if certain corporations agree to sell at uniform minimum prices, thereby eliminating price competition among themselves, they are likely to try to protect themselves against outside competition by acting in concert to compel corporations which are not parties to the agreement to observe the same minimum sales prices.

"Many self-imposed restraints which limit competition are entirely reasonable and unquestionably legal. If there has been a needless and wasteful multiplication of styles in a particular industry, because of competitive attempts to capture public fancy, an agreement to limit and standardize styles and quality will cut off one form of competition, but it does not unreasonably restrain interstate commerce. Coercive restraints, on the other hand, are nearly always unlawful, primarily because the means by which they are effectuated, i.e., boycotts, violence, threats, are ordinarily unreasonable, if not unlawful. The use of such unlawful or unreasonable means may be sufficient to make the restraint unreasonable and unlawful.

Price fixing arrangements are a major classification of self-imposed restraints. Two cases, the Trenton Potteries case and the Appalachian Coals case, involved such agreements. In the Trenton Potteries case, where it was held that the Act was violated, the court stated the objections to making legality turn upon so uncertain and difficult a basis as the reasonableness or unreasonableness of the prices which were agreed upon.

In the Appalachian Coals case, the principal ground the court gave for holding that commerce was not unreasonably restrained was that the combination lacked the power to exact monopoly prices. "Whether the court in future decisions will veer toward the Trenton Potteries case or the Appalachian Coals case remains an open question. The former

course seems the more likely. The Appalachian Coals case was decided in early 1933, at a time when the country was near the bottom of one of the worst depressions in its history. The agencies of government and business were alike engaged in efforts to arrest the downward spiral of prices. The industry concerned was one composed of small units, and it had long been a declining or 'sick' industry."

Price uniformity may be achieved, however, by other methods than price agreements. Among these methods are (1) adherence to published prices; (2) concerted adoption of uniform terms or methods of sale; (3) interchange of information concerning prices, production, costs, stocks on hand, etc. It has been held that agreement to adhere to published prices or practices having such an effect are illegal and the same result has been reached with regard to concerted adoption of uniform terms or methods of sale. Programs for the exchange of statistical information have been sustained in two cases, and found to be illegal in three. The cases where such an exchange of information were upheld were cases in which it appeared that the members of the associations involved were free to act as they chose upon the information, and there was no proof of any concerted action.

Coercive restraints which normally take the form of absolute or conditional boycotts have been condemned in general terms, without spelling out the precise basis for this conclusion. The District Court in the Sugar Institute case appears to have held the view that a restraint by boycott was open to the defense; that the restraint was reasonable but the Supreme Court has not passed upon this view.

Price Leadership. George P. Comer, Economic Adviser, Anti-trust Division, Department of Justice. pp. 61-73.

"The old trust problem in broad outline is familiar to all of us. Forty or fifty years ago monopolistic activity became so bold and widespread that the whole country was alarmed about it. This was the heyday of the Standard Oil trust, the tobacco monopoly, steel rail pools, and railroad rate discriminations. There were real grounds for fear that a few large corporations would soon control all the major industries of the United States with the consuming public considered only to the extent of what the traffic would bear by way of price exactions."

"The modern trust problem consists of a multitude of business activities which as a rule are less crude and blundering than the old ones. Big corporations are gradually manifesting a little more

sense. It is unnecessary to over-emphasize the inherent morality of the modern business man. One important reason for his improved morals is the fact that he has discovered that, as a rule, the 'public be damned' attitude no longer pays good dividends."

"One of the most important parts of the new trust problem to-day is covered by the terms 'price leadership' and 'market leadership.' These expressions refer to the fact that where there are a few important producers in an industry, not necessarily dominant from the point of view of volume of production, all the producers both large and small are likely to pattern after the leaders in price policies, price quotations, and marketing methods."

"In the old days secret meetings to fix prices were often acrimonious and long drawn out. It is a much simpler matter and less disturbing to the nervous system to fix prices by the leadership principle. It is not even necessary to agree to follow the leader. Easy acquiescence in the leader's move is all that is required: 'You go ahead and we'll follow if you are not too far out of line.'"

"The underlying conditions customarily found where market leadership operates successfully are: (1) standardization of product; (2) sales at delivered prices only; and (3) the presence of a few large, well-informed producers in the industry."

"The most nearly instantaneous results from price leadership are found in products sold largely on the basis of engineering specifications. When the purchasing agents begin to take orders from the engineering department, advertising, prestige of companies, and personal relations recede in importance and prices for the same specifications from all producers are automatically identical and changes in price flash almost instantaneously through the trade."

"In most industries operating under a price formula, price stability is looked upon as a desirable end in itself. This is especially true on the downward side where any concessions from formula prices are looked upon as necessary evils. If a firm has a number of plants, they ordinarily will close some of them completely before making substantial price reductions or, if but a single plant is involved, it limps along on a small percentage of capacity operations. Producers are likely to take the point of view that it is nobody's business but their own if they want to close their plants rather than become 'chiselers,' as they are likely to call price cutters."

"What about the consumers on the one hand and the labor force on the other when an industry is striving to hold up prices? In times

of great economic strain, such as recurrent depression periods, the rigid or stable price advocates are likely to be damming up the rills while the flood is engulfing them. The blind forces of economics pay little attention to the games of arithmetic which those operating under formula prices are likely to indulge in. More simply stated, if prices under depression conditions are not allowed to fall, production will. At the very moment when revival meetings are being held among the industrial leaders to bolster the price lines with admonition to hold them firm against all odds, factory production is likely to be plunging downward in a precipitous decline because people won't and can't buy at the high price levels. The net result is that the brunt of the depression falls upon the factory labor force and indirectly upon the consumers through maladjustments of price and income."

"Since the opportunities of coping with the price leadership problem by prosecution under the existing law are subject to uncertainties it is desirable to explore the possibilities offered by remedial legislation. The one point vulnerable to legislation in most industries where price leadership exists is the practice of quoting only delivered prices.

"Legislation to control this practice might take one of two forms. It might merely forbid the quoting of delivered prices exclusively, or it might compel the quotation of uniform f.o.b. mill prices exclusively. Under the first proposal, it would be open to producers to vary their f.o.b. mill prices, depending on the destination of the goods and thereby achieve uniform delivered prices, regardless of differences in transportation costs. However, even though this were done, the opportunities for price leadership would be curtailed, for price comparison becomes difficult when differences in freight charges among the competitors have not been eliminated by the use of some common determinant as is provided by a zone, gateway or basing point system.

"The more rigorous proposal is clearly the second: the requirement that only f.o.b. mill base prices be quoted and that these prices be uniform for each grade of product. The requirement of uniformity would prevent the quoting of a lower f.o.b. price to a more distant community in order to meet the competition of a competitor located closer to that community."

That the benefits to be derived from extirpating price leadership in this manner would be unalloyed is open to question. Thus, it is a serious question whether, and to what extent, large companies in some industries would gain a competitive advantage over smaller companies in a change from a delivered to an f.o.b. price basis."

"The extent of the disturbance of the business of fabricators now operating under base or zone prices in many industries and the effect upon the ultimate consumer, especially west of the Mississippi, where freight absorption may be heavy in shipments to some areas under a formula price system, should also be considered in connection with a compulsory change to f.o.b. prices."

Patents and the New Trust Problem. Joseph Borkin, Economist in charge of Patent Unit, Antitrust Division, Department of Justice. pp. 74-81.

"Before identifying the abuses in detail, it is necessary to give a brief synopsis of the United States Patent Laws. It is most important to realize that Congress may revise or repeal these laws or even neglect to establish any at all under the powers granted it by the Constitution. There is nothing mandatory upon Congress in the constitutional provision to authorize the granting of any patents.

"The first patent law was passed in 1790. Not at all complex, it provided that 'any useful art, manufacture, invention, or device, or any improvement therein not before known or used' might be patented. The right of exclusive ownership was to last for fourteen years."

"Without attempting any detailed analysis of the evolution of the legislation, it may be stated, in agreement with the views of most experts, that from the first patent law to date, changes, additions, and revisions of the law have been largely procedural, neglecting fundamental change.

"By judicial interpretation a patent right has come to include the power (1) to withhold the invention from use by anybody; (2) to use it exclusively; (3) to sell or assign with all rights; (4) to license its use or sale; (5) to sue infringers."

"Where originally single patents often covered complete processes, and even entire industries, they have now come to relate to only parts of larger, more involved techniques already substantially mechanized. Consequently, patents have become dependent upon each other, and unless all the necessary patents for a specific operation are owned or controlled or licenses are acquired, manufacturing in many lines of industry becomes legally hazardous. An example of this is given in the following quotation:

'We went into our factory and if we tried to wind the coil this way somebody out in Oklahoma had a patent for it. If we tried to wind it another way somebody else in Peoria, Illinois had a patent for it; and if we decided not to wind it at all we found omitting it was covered by a patent of somebody else.'"

"With the diversified ownership of patents in industries, conflict has necessarily followed, and as a result the Patent Office and the federal courts are handling an ever increasing number of interference actions and patent infringement suits. Patent litigation is an extremely complex procedure involving large expense and long periods of time. It is estimated by various experts and patent lawyers that to carry a single patent suit through the Supreme Court of the United States costs between seventy-five thousand and a million dollars, depending upon the financial reserves of the litigants, the character of the patents, and the ability of the attorneys to delay the proceedings and harass each other."

"As a result, certain industries, especially those most afflicted by patent deadlocks, attempt to circumvent the difficulties of conflict by private contracts. In some cases, notably aviation and radio, where the national defense was involved, the Government has taken part in attempting to eliminate the confusion inherent in the patent problem. The basic idea in each instance was to achieve some sort of a patent consolidation as a means of eliminating or forestalling a deadlock."

"Roughly speaking, three forms of organization have emerged from time to time in an effort to circumvent the patent impasse: (1) single ownership of all patents by an individual or corporation; (2) patent pooling associations; (3) cross-licensing agreements. It is in the operation of these patent combinations, the avowed purpose of which was to break patent deadlocks, that abuses have developed."

"With the organization of these patent combinations, there has been created a corresponding aggregate of concentrated financial power. By virtue of the exclusive rights granted under the patent law these combinations have used the assembled patents as a convenient device to restrain competition and the free flow of commerce. The two main methods whereby this device is employed are (1) the patent infringement suit, and (2) the license agreement."

"By threatening less powerful individuals with infringement suits or by similar intimidation of the latter's customers, holders of groups of patents have reduced competition in many fields of industry to a vestigial state. With the ability to back up their threats by

aggressive infringement suits, they have been able to perpetuate their monopoly long after the expiration of the basic patents. By patenting improvements of no real consequence and by obtaining patents of questionable validity, they have built up formidable weapons. The fact that many of the patent privileges asserted may rest upon spurious grounds is beside the point, since the expense of establishing that fact in the courts is usually insupportable by those against whom these weapons are employed. The independent as a rule finds it beyond his means either to institute or defend such litigation. He must either accept a license for use of the patents owned by the controlling group or endeavor to continue competition under a severe handicap."

"But hardly a less effective instrument of limiting competition and maintaining control is the license agreement. By means of this device the holder of a group of patents, whether a single corporation or an association, may impose limitations upon the licenses which seriously affect the latter's ability to compete. Quota systems of manufacture and sale are established as well as provisions for maintaining prices. Not infrequently the licensee is forced to agree to purchase raw material, repair and replacement parts, or even to purchase service from the licensor, none of which may be covered by patents. In addition, he may be forced to pay royalties on unpatented articles and operations. If he does not comply, he is always subject to cancellation of the license or to the risk of a patent infringement suit. The fact that some of the restrictions imposed may be of doubtful legality or even clearly invalid under decisions of the Supreme Court does not destroy the licensor's de facto power to impose them."

"Until very recently no systematic attack has been made on the problems presented by the abuse of patent privileges. Within the past year, however, this problem has become the object of two major inquiries.

"The first of these has been conducted by the Antitrust Division as part of the program of the Temporary National Economic Committee."

As a result of this inquiry, the Department has suggested legislation to eliminate the abuses of the patent privilege but the submission of these recommendations does not constitute an admission that the conduct at which the recommendations were aimed is entirely legal under existing laws. As the press releases of the Department have indicated, it is concerned primarily with the inadequacies of the decisions and hopes that pending actions will result in a clarification of the line at which the legal use of patent rights ends, and illegal restraints in commerce and combinations in trades begins. At the present time, a grand jury in

New York will begin to investigate the extent to which patent rights are improperly utilized to control various industries, and an equity suit has been begun in the Northern District of Ohio involving the use of patents in the glassware industry. A civil suit was here instituted because the facts in the case were made public as a result of the Temporary National Economic Committee hearings at which a number of defendants testified.

Antitrust Labor Problems: Law and Policy. Edward H. Miller, Special Assistant to the Attorney General, Antitrust Division, U.S. Department of Justice. pp. 82-89.

"Interest in the applicability of the antitrust laws to certain activities of organized labor has been heightened by the current drive of the Department of Justice to eliminate unreasonable restraints of trade in the building industry, in which some of the indictments already returned have been against labor organizations and their leaders. A question, agitated from time to time ever since the Sherman Act was passed, is again being raised, namely, whether the Act applies to the activities of labor organizations at all and, if so, to what extent. The total exemption of labor unions from the application of the antitrust laws has been twice urged upon federal courts within recent months, in the Supreme Court of the United States in the Chicago Milk case, and in the Circuit Court of Appeals for the Third Circuit in the Apex Hosiery Company case."

"Those who contend that the Act grants immunity to labor rest their case chiefly upon its legislative history. It is impossible here to examine the question of the weight to be accorded the debates and committee reports in the interpretation of a given statute, but certainly the two-year's history of the Sherman Act does not point convincingly in support of the immunity claim. Scholars examining that history have reached conflicting conclusions. It is my opinion that the contention that labor should be subject to the Act is the more persuasive. In the debate in the Senate it was argued that the bill, if enacted, would be employed to oppress labor and agricultural organizations, and Senator Sherman offered a proviso exempting the activities of such organizations from the Act. Senator Edmunds attacked this proviso on the floor of the Senate. The bill was then referred to the Judiciary Committee of which Senator Edmunds was chairman. The language of the bill was materially altered by the Committee, and no proviso exempting labor was included. Senator Edmunds, who had vehemently opposed the exemption, professed himself satisfied, and no reference to the labor problem appears in the subsequent debates in either Senate or House.

"It has been argued that the elimination of the proviso clearly indicates that Senator Edmunds' view prevailed. If so, why did not the protagonists of labor voice objection to it? On the other hand, it is contended that the revised bill, by restricting the Act's applicability exclusively to business combinations, made specific exemption of labor unnecessary. But the latter explanation begs the question in issue and leaves Senator Edmunds' acquiescence unaccounted for. A solution which will explain the reconciliation of the conflicting senatorial positions is that, while the revised bill was applicable to labor, nevertheless it applied only to unlawful labor activities. The bill to which the proviso had been appended gave justifiable grounds for believing that activities of labor unions which had previously been regarded as lawful would be in violation of its terms. The removal of this threat by the revision of the bill sufficed to satisfy the advocates of the proviso without giving to labor a blanket immunity which would have met with the continued opposition of Senator Edmunds."

"Two sections of the Clayton Act are relied on by proponents of the blanket exemption, Sections 6 and 20. Section 20 prevents the granting of injunctions by federal courts against specified labor activities which even at the time were generally considered legal, such as peaceful picketing. By implication it left undisturbed the illegality attaching to certain other conduct.

"Section 6, after declaring that 'the labor of a human being is not a commodity or article of commerce,' provides that 'Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor . . . organizations . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.' This section was the answer to the promise made in 1912, following the apprehensions engendered by the Standard Oil Company decision. It removed all doubt of the right of labor to organize in unions, and affirmed the legality of their status against any fear of dissolution. By the use of such language as 'legitimate objects,' and by legalizing not the acts of labor organizations or their members, but only the organizations and members themselves, it plainly is confined to an attempt to protect labor unions against a charge of an unlawful status.

"With the Clayton Act, as with the Sherman Act, the legislative history denies the blanket exemption claim. In the course of debates in the House, and after a question had been raised as to the meaning of Section 6 and particularly the meaning of the declaration that labor is not a commodity or article of commerce, a clear-cut exemption proviso was

offered by way of amendment and rejected. The Supreme Court took the first opportunity to refute, in very explicit language, the suggestion that the Clayton Act had created any such blanket immunity. In Duplex Printing Press Company v. Deering, a majority of the Court held that Section 6 of the Clayton Act protected only the existence of labor organizations."

"The passage of the Norris-LaGuardia Act is particularly significant in this connection because it shows just how far Congress was willing to limit the application of the antitrust laws, after a legislative gap of many years, bridged by frequent attempted amendments and almost constant consideration. The act merely prohibits the use of injunctions against labor organizations with respect to labor disputes. It removes no other penalties or remedies. It does not even prohibit the remedy of injunctions against labor unions when they are not engaged in labor disputes.

"This act, passed after almost twenty-five years of controversy over the decisions applying the Sherman Act to labor, shows better than anything else that Congress accepted the Supreme Court decisions as they stood and changed what it considered to be established law only to the extent of the right to obtain injunctions."

"Assuming, then, that labor unions must govern their activities in the light of the antitrust laws, to what extent do those laws affect them? Although the Supreme Court has only once, in the Window Glass case, indicated that the rule of reason applies to labor antitrust cases, it would seem that here, as in the case of activities by industry, no better criterion could be found. With labor, as with industry, it is difficult to determine reasonableness of conduct in the abstract. The problem of antitrust enforcement can never be settled by definitions. The case-by-case approach technique is the only sound one. But with the necessity of a preliminary governmental decision on the advisability or duty of instituting proceedings on each set of facts presented, some statement of policy from the Department that is obliged to make the decisions can be of some value, however general it must be. The position outlined below is largely derived from statements of the Department's policy which have heretofore been made public.

"The antitrust laws should not be used as an instrument to police strikes or adjudicate labor controversies. In each of the Supreme Court cases referred to above the question was presented whether the particular restraint involved was unreasonable and was not calculated to achieve a legitimate labor purpose. The right of collective bargaining by labor unions was and is recognized by the antitrust laws to be a reasonable exercise of collective power. The Department does not question,

or have any desire other than to protect, the right of labor unions to use their bargaining power legitimately to consolidate it, to forestall speed-up systems, and to improve the condition of their members by promoting improvements with respect to wages, hours, health, and safety. To restraints of trade resulting incidentally from such activities, the rule of reason prefixes the legalizing 'reasonable'.

"In the current building investigation a large number of legitimate activities of labor unions have been brought to the attention of the Antitrust Division. It has been asked to proceed against labor unions because they maintain high rates of wages, because they strike to increase wages, and because they attempt to establish the closed shop. All such requests have been consistently disregarded.

"Refusals by unions to work on goods made in non-union shops have also been brought repeatedly to the attention of the Division. In the past courts have held that such secondary boycotts are violations of the antitrust laws. In the Duplex and Stone Cutters' cases a minority of the Supreme Court presented the argument against this view. In view of such conflict of opinion among judges of the highest court as to the reasonableness of such activities, the attorneys in the building investigation have been instructed not to institute criminal prosecutions in such cases.

"The kinds of activities which will be prosecuted may be illustrated by a practice frequently found in the building industry. Suppose a labor union, acting in combination with other unions to dominate building construction in a city, succeeds by threats of strikes or boycotts in preventing the use of economical and standardized building material in order to compel persons in need of low-cost housing to hire unnecessary labor. Here is a situation having no reasonable connection with wages, hours, health, safety, or the right of collective bargaining. The union may not thus perpetuate unnecessarily costly and uneconomical practices in the housing industry. Progressive unions have frequently denounced this 'make work' system as not to the long-run advantage of labor. Such unions have found it possible to protect the interests of labor in the maintenance of wages and employment during periods of technological progress without attempting to stop that progress. They have been able to protect labor from abuses connected with the introduction of improved methods of production without preventing the improved methods."

"The building drive is not against labor unions. It is against all of those persons or groups who are found to have entered into unreasonable agreements in restraint of interstate trade and commerce. This means that the Department will proceed against manufacturers,

distributors, contractors, labor organizations, or individuals connected with any of the above groups, when evidence convincingly indicates that they have violated the law. The Department of Justice must enforce the law impartially in any situation which it is compelled to enter. Any attempt to eliminate unlawful restraints in the building industry which deliberately and systematically excludes labor unions, irrespective of the nature of their activities, would be a travesty. Rather than try to proceed along such lines the Department of Justice might as well drop all efforts to clear away unlawful restraints in the building industry.

"The types of unreasonable restraint against which the Antitrust Division has recently proceeded or is now proceeding illustrate concretely practices which are unquestionable violations of the Sherman Act, supported by no responsible judicial authority whatever.

1. Unreasonable restraints designed to prevent the use of cheaper material, improved equipment, or more efficient methods. An example is the effort to prevent the installation of factory-glazed windows or factory-painted kitchen cabinets.

2. Unreasonable restraints designed to compel the hiring of useless and unnecessary labor. An example is the requirement that on each truck entering a city there be a member of the local teamsters' union in addition to the driver who is already on the truck. Such unreasonable restraints must be distinguished from reasonable requirements that a minimum amount of labor be hired in the interests of safety and health or of avoidance of undue speeding of the work.

3. Unreasonable restraints designed to enforce systems of graft and extortion. When a racketeer, masquerading as a labor leader, interferes with the commerce of those who will not pay him to leave them alone, the practice is obviously unlawful.

4. Unreasonable restraints designed to enforce illegally fixed prices, as in the Chicago Milk case.

5. Unreasonable restraints designed to destroy an established and legitimate system of collective bargaining. Jurisdictional strikes have been condemned by the A.F. of L. itself. Their purpose is to make war on another union by attacking employers who deal with that union. There is no way the victim of such an attack may avoid it except by exposing himself to the same attack by the other union. Restraints of trade for such a purpose are unreasonable whether undertaken by a union, or by an employer, or by a combination of a union and an employer, because they represent an effort to destroy legitimate collective bargaining relationships, assuming the established union is a bona fide one."

Complaints of Antitrust Law Violations
and Their Investigation

1. The Work of the Complaints Section of the Antitrust Division.
Edward P. Hodges, Special Assistant to the Attorney General,
and Chief of the Complaints Section of the Antitrust Division,
U.S. Department of Justice. pp. 90-94.

"If the development of pending antitrust cases is traced, it will be found that each originated in complaints to the Department. Ultimate consumers complain infrequently because violations of the anti-trust laws usually affect them only indirectly. Although large concerns complain when suffering at the hands of other powerful interests, a great majority of the complaints received come from small business men who feel that they are the victims of illegal activities which will take from them their investments and their business opportunities if they are not protected by the Government.

"At the outset it may prove interesting to review an actual complaint. Not long ago four major typewriter companies were indicted in the Southern District of New York. The Department did not select these defendants after gazing into a crystal ball. Some time ago a certain prominent Washington lawyer was dissatisfied with the trade-in allowance offered by the local representative of a major typewriter company. He tried three other companies only to be quoted identical prices for a new machine and to be offered the same allowance for his old typewriter. This man is known as a corporation lawyer and is entirely sympathetic with big business. However, he became so thoroughly irritated that he wrote to the Assistant Attorney General in charge of the Antitrust Division concerning his experience. Similar letters were received from consumers in all parts of the country. Dealers in second-hand machines also complained. Investigation of these complaints led to the indictment referred to."

"The number of complaints received increased almost 50 per cent in the past year over the year preceding, and the volume of complaints continues to grow. Complaints received from January 1 to November 30, 1939, inclusive, totalled 2751. Of these 1373 related to price increases following the outbreak of the present war in Europe."

"Situations which involve probable violations of the law but are lacking in substantial public interest have been disposed of satisfactorily after conference with attorneys for the companies involved. Where a situation does not justify the expense of investigation, much can be done by merely letting the companies involved know that they are under surveillance.

"Preliminary investigation of meritorious complaints which involve substantial public interest are made through the Federal Bureau of Investigation. After the Bureau has completed its investigation at times the Department does not press the matter further because facts tending to make a case have not been developed. Sometimes, when the public interest will permit, informal disposition of a case is possible. For instance, the owner of a patented process was seeking to obtain a monopoly for his process by a very wide form of license agreement. The matter was ended when he changed his form of license agreement. The Department will observe the actual working of this concern under the new licensing agreement and, if it proves satisfactory, nothing further will be done."

"From the data presented earlier in this article, it is obvious that a large proportion of the complaints are disposed of by means other than the institution of legal proceedings. Where, however, the preliminary investigation indicates that court action will probably be taken, representatives of the Department go into the field to develop more important aspects of the case. If the type of case will permit, conferences are held with the companies complained against. Of course, there are many complaints in which to approach the defendants would be merely to give them an opportunity to destroy documentary evidence before a grand jury could be called."

II. The Selection of cases for Major Investigations. Fowler Hamilton, Special Assistant to the Attorney General, and Assistant Chief of the Complaints Section, Antitrust Division, U.S. Department of Justice. pp. 95-99.

"An attempt is made by the Antitrust Division of the Department of Justice to conduct at least a preliminary investigation of all complaints which give promise of being meritorious. Frequently the complainant is a business man unfamiliar with the requirements of the federal antitrust laws, and his complaint is usually limited to a very general description of practices which appear to him to violate the antitrust laws. In such a case the complainant is requested to supply additional information."

"If the additional information supplied supports the original complaint, a preliminary investigation of the situation is undertaken by agents of the Federal Bureau of Investigation who conduct a thorough investigation based on information supplied by the complainant. Following this inquiry, the Economic Section of the Antitrust Division then prepares a study of the industry involved. It is the purpose of the economic analysis not only to shed light upon the validity of the

complaint but to present a general picture of the industry so that the practices involved may be viewed in perspective and their economic and social consequences observed."

"The importance of the economic analysis is not limited to the preliminary investigation. The facts about profits, production, prices, and the working of the industry which it produces constitute the basis for a decision regarding further action. In addition, such a study yields information from which a plan for a comprehensive study can be made.

"Limitations of personnel alone make it impossible to continue beyond the preliminary stage every inquiry which discloses practices which are questionable under the federal antitrust laws."

"It is difficult to overemphasize the restrictions that limitations of personnel impose upon the selection of cases of major investigation. Generally the number of such investigations undertaken in the course of a year depends upon the amount of the annual appropriation, much of which must be expended for the enforcement of laws other than the Federal Antitrust Acts. The Antitrust Division is required to handle legal proceedings in connection with thirty statutes besides the Sherman Act and the Clayton Act."

"Limitation of personnel makes availability of information an important factor in the selection of matters for major investigation. Therefore, it is not surprising that many major investigations and litigations grow out of previous investigations by the Federal Trade Commission.

"It sometimes happens that the preliminary investigation yields sufficient information to support immediate legal action. This most frequently occurs when the complainant's interest in enforcement is so vital that he has conducted an investigation to secure facts supporting his complaint. Familiarity with the industry and access to confidential sources of information make independent investigation of this type particularly fruitful.

"Since a rigid process of selection must precede a major investigation, the final decision must necessarily be one of administrative judgment. The economic benefits that may reasonably be anticipated through eliminating combinations in restraint of trade are one of the important consequences. With the economic considerations must be balanced such legal ones as the effect which any case that may result from the investigation will have upon antitrust law enforcement. If practices have grown inveterate and have been boldly maintained so that their

existence is a matter of common knowledge, then, if they are unlawful, enforcement has a powerful deterrent effect. Where there is doubt about the legality of a widespread practice, action may be necessary to secure an authoritative determination of its validity. A case small in its immediate economic effect may through its importance as a precedent attain major significance."

III. Processes in the Investigation of Complaints.

Charles L. Terrel, on the staff of the Antitrust Division of the U.S. Department of Justice, pp. 99-103.

"At the outset an effort is made to learn with the least possible expenditure of time the peculiar characteristics of the industry, the dominant members of the industry, interrelations between members of the industry, connections (financial, commercial or personal) between this industry and other industries, and the recent technical, financial or organization changes within the industry which may have affected the competitive balance."

"Most industries will be found to have a 'bottle-neck' in their operation or processes, which may have relatively great influence on the competitive pattern. In some instances the bottleneck may be in patents, resulting from the fact that one or several concerns have a considerable advantage from exclusive access to certain product refinements or manufacturing processes. In other instances the availability or control of raw materials may be a controlling factor. Control over the established available merchandising channels often is the outstanding characteristic; sometimes the investment requirements are such that mere access to unlimited or superior financial resources may be the determinant. Common ownerships or relations which may afford influence over an appreciable fraction of the consuming market may be a less evident but none-the-less effective competitive factor."

"During the course of the investigation thus far described, recourse may have been had, or may now be had, to the facilities of the Federal Bureau of Investigation, to answer specific questions of fact. The Bureau is depended upon for acquisition of specific facts, but the anti-trust investigator must assume full responsibility for their synthesis, analysis and corroboration."

"After a recommendation has been made, on the basis of the investigation outlined above, that the investigation be dropped or that a grand jury be called to consider specific evidence of antitrust law

violation, the objective of the investigation changes in character. Previously the study has been conducted for the purpose of understanding the competitive pattern in the industry, the position of each of the major concerns, and the results of the type of competition actually existing. Now, however, the effort becomes more specific, and the purpose is to determine with finality the existence of violations. No distinction is made between the investigation for presentation of evidence before a grand jury and the acquisition of evidence for presentation in subsequent trial, as it is the practice not to seek an indictment until and unless the evidence collected is of such nature as to indicate that a convincing case can be placed before a jury.

During the presentation of evidence before a grand jury the Department's investigators work with the grand jury, and make use of the powers of subpoena available to grand juries. Evidence is obtained through interviews with prospective grand jury witnesses, and through perusal of documents obtained under subpoena power from files of the members of the industry. Such file information usually is required from all factors in the industry, whether the subjects under subpoena have or have not apparently participated in the activities under review. Those against whom illegal restraints have been practiced are just as likely to have information of evidentiary value in their files as those who are responsible for such restraints."

Remedies Available to the Government Under the Sherman Act.

Wendell Berge, Special Assistant to the Attorney General, and first assistant to Assistant Attorney General Thurman Arnold in charge of the Antitrust Division of the U.S. Department of Justice; also alternate member of the Temporary National Economic Committee. pp. 104-111.

"The antitrust laws provide both criminal and civil remedies. Section 1 of the Sherman Act makes every contract, combination or conspiracy in restraint of trade illegal. It provides that every person who violates the section shall be deemed guilty of a misdemeanor, and subject to fine or imprisonment. Section 2 provides that every person who shall monopolize, or attempt to monopolize, or combine or conspire with other persons to monopolize any part of trade or commerce among the several states shall be guilty of a misdemeanor, likewise punishable by fine or imprisonment. In addition to these criminal provisions, the district courts are given jurisdiction to entertain equity suits to prevent or restrain violations of law through the issuance of injunctions."

"It is the announced policy of the Department of Justice, unless there are compelling reasons to the contrary, to bring criminal actions rather than suits for injunction where the evidence indicates that illegal acts have been committed. In particular situations, there may be extenuating circumstances which warrant the Department in bringing civil suits instead of criminal suits, such as long continued acquiescence on the part of the Government in the commission of the illegal acts. But in general there can be few reasons for failing to present evidence of criminal violation to a grand jury."

"The officials charged with the enforcement of the antitrust laws are charged with the enforcement of a criminal statute aimed at acts which the American people for 50 years have regarded as anti-social. The criminal remedies were no doubt provided in the broad sense to coerce obedience to those laws.

"The civil remedy, on the other hand, can have a definite, constructive value, looking to rearrangements in the conduct of business to bring it in line with the law. There are situations where long acquiescence on the part of the Government makes the institution of criminal proceedings inequitable. There are other cases where effective public relief can only be accomplished through equity suits. Typical of these latter cases would be a case of a company that had built up a monopoly through the acquisition of many competing units, and where effective public relief might depend upon a systematic decentralization of the economic power of the company by an ordered divestiture of its holdings, under the supervision of a court of equity."

"There is no reason why civil and criminal remedies can not and should not be pursued concurrently. Cases may well arise where effective public relief requires both criminal prosecution and an injunction."

"In the negotiations for consent decrees there is much greater latitude for suggestion and compromise by the Government where a civil suit only has been instituted than where a criminal suit is also pending. Where a civil suit only is pending, the Government may exercise sound discretion in making concessions in return for that which it deems to be substantial public benefit. In such circumstances, if the Government believes that it is in the public interest to accept a decree which the defendants have tendered, and the decree grants substantial relief, although perhaps not all of the relief, sought by the Government in its equity suit, it is quite within the bounds of propriety for the Government to accept such a decree. The Government may feel that its case is vulnerable in certain respects and that the decree which the defendants have submitted gives substantially all the relief that can be hoped for.

The Government, therefore, may feel that acceptance of a proposed decree is warranted, even though there is a theoretical chance that more relief could be secured by going through a trial. Where a civil suit only is pending, negotiations may be freely conducted at any stage of the litigation and there is no apparent reason why the Government cannot suggest provisions which might be appropriate for inclusion by the defendants in the decree they submit.

"But where a criminal proceeding is pending, the Government's right to urge the inclusion of any particular provisions in a decree offered for settlement of a concurrent civil suit is definitely limited. The criminal proceeding cannot be used to coerce any kind of consent decree. Nor can the Government, when a criminal case is pending concurrently, make compromises or engage in bargaining in order to induce the inclusion of certain decree provisions in return for the concession of others. If, however, parties who have been indicted are willing to offer constructive proposals which are in the public interest and which go beyond what the law requires and beyond anything that might be achieved through successful criminal prosecution, the Department can always receive and consider such proposals and if it deems them in the public interest can submit them to the court for consideration as a basis for settlement of the controversy. If decrees which have been thus voluntarily proposed by the defendants are accepted by the Department, they may be submitted to the court with the recommendation that the indictment be nolle prossed. The vital question in such a situation is whether the proposed decree goes so far in promoting the public interest that the Department is warranted in recommending dismissal of the criminal proceedings."

"The public is the client of the Department of Justice in antitrust actions, and not the complainants in the particular cases. The public interest may or may not best be served by pressing all the claims of the complainants, and only the Department has the duty and responsibility of deciding about the institution of proceedings, what the charges shall be, whether a criminal or a civil proceeding shall be instituted, and after filing, how it shall be prosecuted and disposed of in order best to represent the public, who necessarily cannot be called into consultation for advice or instructions."

... "It is hoped that the present activity of the Department of Justice will focus public attention on such weaknesses as exist in present procedures and that the way will be pointed toward wise procedural improvements.

Specific procedural improvement has already been proposed in the O'Mahoney Bill providing additional civil remedies against violations of the antitrust laws "..."

"The O'Mahoney Bill provides that any violation of any provision of the antitrust laws by any company shall be deemed a violation by each officer or director who shall have authorized any act constituting the violation in whole or in part. In any proceeding against any officer or director he shall be presumed to have authorized company action if he shall have had knowledge of any act constituting part of the violation. If evidence is introduced in behalf of such officer or director to rebut such presumption, the fact of his knowledge shall nevertheless be submitted to the jury, or if the case is tried by a court without a jury it shall be taken into account by the court as evidence of such authorization. The bill provides that officers or directors who have authorized the acts constituting antitrust violation shall be liable for civil penalties to be measured by reference to their compensation and recovered in a civil action brought by the United States. The bill also provides that in a civil suit by the United States such officers or directors may be enjoined from rendering any service to their company, permanently or for a specific period not less than ninety days, and from receiving any compensation during such period. The companies also may be enjoined from receiving service from such officers and directors during such period and from paying any compensation to them while the ban is in effect. The bill also provides a direct company financial liability to be recovered in a civil suit brought by the United States. In effect the bill treats violations as public torts rather than crimes.

"The O'Mahoney Bill provides a technique for enforcement without invoking all of the emotional disturbance which generally attends the use of the criminal process. While civil penalties may be as severe in their financial effect as criminal penalties, yet they do not involve the stigma that attends indictment and conviction. Most of the defendants in antitrust cases are not criminals in the usual sense. There is no inherent reason why antitrust enforcement requires branding them as such. If there were some real hazard, other than criminal prosecution, perhaps effective enforcement could be secured without criminal prosecution. But if effective civil penalties are absent, there is no real hazard. Under the present law businessmen know that an injunction amounts to nothing more than a specification of what activities will be regarded in the future as violations of law. "

"If the O'Mahoney Bill is enacted, there will be added to the law a deterrent which ought to be effective and which does not require indictment and the other consequences of criminal prosecution so unpopular with the business community. But until the O'Mahoney Bill, or some measure incorporating similar principles, is enacted there can be no let-up in the use of the only real enforcement weapons now at hand. As the law now stands effective enforcement means criminal enforcement."

The Conduct of Grand Jury Proceedings in Antitrust Cases.

John Henry Lewin, Special Assistant to the Attorney General,
Antitrust Division, U.S. Department of Justice. pp. 112-137

"With but few exceptions, all the criminal prosecutions instituted under the Sherman Antitrust Act have been commenced by grand jury indictment. This course has not been followed under constitutional compulsion; prosecutions under the Act may be instituted by information. But resort to the grand jury possesses definite advantages to the Government in its enforcement of the Sherman Act."

"It has two primary functions: accusation and inquisition. When evidence indicating prima facie the violation of a criminal law is placed before the grand jury, it is the jury, not the prosecuting official, who takes full responsibility for determining whether the person charged should be put upon his trial. As Mr. Justice Field pointed out in an historic charge to a grand jury, 'in the struggles which at times arose in England between the powers of the king and the rights of the subject, it [the grand jury] often stood as a barrier against persecution in his name; until, at length, it came to be regarded as an institution by which the subject was rendered secure against oppression from unfounded prosecutions of the crown.'

"In a democratic nation, the need for this safeguard to the citizen has diminished. It is the inquisitorial power of the grand jury which, according to Judge Kirkpatrick in a recent case, 'is the most valuable function which it possesses today and, far more than any supposed protection which it gives to the accused, justifies its survival as an institution. As an engine of discovery against organized and far-reaching crime, it has no counterpart. Policy emphatically forbids that there should be any curtailment of it except in the clearest cases.'"

"To the Antitrust Division, the presentation of a case to the grand jury provides an opportunity to direct the jury's powers in aid of the Division's inquiry. The handicap which the lack of subpoena power places upon preliminary investigation is at once removed. The evidence necessary for successful prosecution can be acquired, tested, and organized for presentation without the need for disclosing its nature to those against whom it is to be used. Testimony can be obtained for subsequent use, if needed, at the trial of a case for impeaching the hostile, or refreshing the forgetful, witness. If the proof fails to persuade the grand jury, this indicates that it would not persuade the petit jury, and persons complained of may be spared the embarrassment of a criminal trial.

"The importance of grand jury proceedings to the enforcement of the Sherman Act makes it highly desirable that the law governing them be carefully observed, a caution which is all the more consequential in view of the fact that antitrust proceedings before a grand jury may consume months of time and cost many thousands of dollars. Yet, despite the antiquity and the importance of the institution, the law relative to the grand jury, especially in federal cases, is obscure at many points and has been the subject of relatively little study. The lecture on which the present essay is based was designed to point out to the government attorney the problems he may encounter and the pitfalls he must avoid, and to consider the principal authorities, judicial and statutory, which throw light on the course he must follow."

"The complexity of the subject matter has compelled its division into 17 sub-topics. . . . The sub-topics to be considered are the following: (1) the use of the information as an alternative to indictment; (2) some preliminary steps; (3) summoning the grand jury and questions as to terms of court; (4) authority to proceed; (5) qualifications and selection of grand jurors; (6) the judge's charge; (7) pleas in abatement; (8) persons who may appear before the grand jury; (9) secrecy of grand jury proceedings; (10) privileges of the prosecuting attorney before the grand jury; (11) practical suggestions as to the prosecutor's conduct in the grand jury room; (12) subpoenas duces tecum; (13) impounding documents; (14) self-incrimination and waiver of immunity; (15) use of grand jury transcript at the trial; (16) presentments; (17) abuse of process."

Trial Technique in Antitrust Cases. Walter L. Rice, Special Assistant to the Attorney General in charge of the United States Government's suit under the Sherman Act against the Aluminum Company of America and 62 other defendants, pp. 138-156.

"An antitrust trial is not fundamentally different from other trials. As a rule, however, it involves broader issues of fact and requires more preparation and greater proof, because the typical antitrust case attacks a combination of large industrial corporations and questions a course of business conduct deemed to be contrary to our competitive system and injurious to other industrial groups."

The subject matter has been divided into ten sub-topics which are treated in detail. The sub-topics considered are the following: Preparing Witnesses by Sworn Statements and Grand Jury Testimony, Depositions and Interrogatories Before Trial, Trial Subpoenas, Inspection of Subpoenaed Documents, Short-Cut in Authenticating Documents, Choice of Trial Method, The Opening Statement, Selection of Witnesses, Strategic

Presentation of Strong Points, Cross-examination of Defendants' Witnesses, Infringement of Privilege Against Self-Incrimination, Vicarious Admissions by Corporate Defendants, and Proof of Competition.

SELECTED REFERENCES

(The following list of current references, while by no means exhaustive, indicates the availability of material concerning legal problems regarding housing, and related documents.)

GOVERNMENT-General

Magazine Abstracts, current discussion of governmental, economic and related matters vol. 6, no. 1-4; Jan. 2-23, 1940 /Weekly./ Processed.

Prepared for use of Government officials for official use only.

Pr 32.208: 6/1-4

Press Intelligence Bulletin 1893-1918: Jan. 2-31, 1940. /Daily except Sundays and holidays./ Processed. Prepared for the Government for official use only.

Pr 32.209: 1893-1918.

HOUSING

-Construction Costs. Bringing down USHA construction costs. 11p. Federal Works Agency, Housing Authority. FW 3.2: C 76

-Construction Requirements-Alaska

Minimum construction requirements for new dwellings located in Alaska.

Federal Housing Administration, Juneau, Alaska, effective Feb. 1, 1940.

(FHA Form 2383). Federal Housing Administration. FL 2.11: A1 1 s

-Delaware

Minimum construction requirements for new dwellings located in Delaware.

Federal Housing Administration, Wilmington, Del. Revised Jan. 15, 1940.

(FHA Form 2362). Federal Housing Administration FL 2.11: D 37

-Florida

Minimum construction requirements for new dwellings located in southern

district of Florida. Federal Housing Administration, Miami, Fla. Re-

vised Jan. 15, 1940. (FHA Form 2318) Federal Housing Administration.

FL 2.11: F 66

-Ohio

Minimum construction requirements for new dwellings located in Ohio
Federal Housing Administration, Cleveland, Columbus, and Cincinnati, Ohio.
Revised Feb. 1, 1940. (FHA Form 2301) Federal Housing Administration.
FL 2.11: Oh 3

-Rhode Island

Minimum construction requirements for new dwellings located in Rhode Island. Federal Housing Administration, Providence, R. I. Revised Jan. 15, 1940. (FHA Form 2347). Federal Housing Administration.
FL 2.11: R 34

-Wyoming

Minimum construction requirements for new dwellings located in Wyoming.
Federal Housing Administration, Cheyenne, Wyo. Revised Jan. 15, 1940.
(FHA Form 2355). Federal Housing Administration FL 2.11: W 99

-Financing

7th Annual Report, Federal Home Loan Bank Board, covering operation of Federal Home Loan Bank System, Federal Savings and Loan Associations, Federal Savings and Loan Insurance Corporation, Home Owners Loan Corporation, July 1, 1938-June 30, 1939. 1939. FHLBB Y 3.F 31/3: 1/939

-General

Federal Housing Administration Clip Sheet, Vol. 22, nos. 5-7; Jan. 2-30, 1940 /1940/ /Biweekly/ Federal Housing Administration FL 2.7: 22/5-7

Federal Loan Agency News, v. 1, no. 1-3; Dec. 26, 1939-Jan. 23, 1940
/1939-40/ /Biweekly/ Federal Loan Agency FL 1.8/1-3

Housing and your community. 8p. Federal Works Agency, Housing Authority
FW 3.2: H 81/3

Housing Index-Digest, v. 3, No. 7, Dec. 1, 1939; issued fortnightly by Sub-Committee on Bibliography, CH Committee on Economics and Statistics. (1939) Central Housing Committee for official use only
Y 3.C 33/3: 7/3-7

Here is the Housing Market. /1940/ 8p. (FHA Form 859) Federal Housing Administration
FL 2.2: H 81

Introduction to Housing, facts and principles. Edith Elmer Wood, Wash., D. C.: Government Printing Office, 1940. xi, 161pp. illus., tables, xviii charts. 30 cents. (USHA)

-Low-Cost

Low-cost rural housing program of Farm Security Administration. (1939)
Farm Security Administration 161.2: H 81/2

-Low-Rent

Low-rent Housing. Development cost of low-rent housing project, Addendum 1. Sept. 12, 1939. (Bulletin 4 on policy and procedure) /Addendum 1. /Processed. Title of Addendum 1 is: Art work for USHA-aided projects. /Federal Works Agency - Housing Authority. I 40.10: 4/2/add.1

Same, Addendum 2. /Nov. 29, 1939. (Bulletin 4 /on policy and procedure, addendum 2) /Title of Addendum 2 is: Cost of automobiles as item of development cost. /Federal Works Agency - Housing Authority I 40.10: 4/2/add.2

Low rents for low incomes. 8p. Federal Works Agency - Housing Authority. FW 3.2 L 95

Low-Rent Housing. Development cost of low-rent housing project. Revised June 30, 1939. (Bulletin 4 on policy and procedure.) /Processed. Substituted for Bulletin 4 dated Feb. 1, 1938, as revised June 30, 1938. For addenda to this Bulletin see above. /Interior Department, Housing Authority. I 40.10: 4/2

-Public

Weekly news from American communities abolishing slums and low-rent housing, vol. 1, No. 21-25; Jan. 2-30, 1940. Each 4p. For sale by Superintendent of Documents. Paper, 5¢ single copy, \$1.00 a year; foreign subscription \$1.80. FW 3.7: 1/21-25

LAW-General

Laws, regulations, decisions of courts, opinions of Attorney General, list of publications for sale by Superintendent of Documents; Nov. 1939. (Price list 10, 31st edition) Government Printing Office, Documents Office. GP 3.9: 10/31

"Fact Research in Law" by Arthur Messbaum in 40 Columbia L. R. 189-219 (February 1940). A thorough discussion of the trend toward a "realistic" administration of the law and its relationship to social and economic influences and conditions.

-Property

Limitation to the Heirs of a Settlor. Comment in 34 Ill. L. R. 835-51 (March, 1940).

-Rural Land Use

Digest of Outstanding Federal and State Legislation Affecting Rural Land Use. Land Economics Division, Bur. of Agricultural Economics, Dept. of

Agriculture, Wash., D. C. Bulletin 54. (March 15, 1940) 16pp.

-Trusts

Depositors Liability under the Uniform Fiduciaries Act for Misappropriation of Trust Funds by a Fiduciary. Comment in 34 Ill. L. R. 819-834 (March 1940)

MORTGAGES

-General

Insured Mortgage Portfolio, vol. 4, No. 7; Jan. 1940. 28p. /Monthly/ Paper, 15¢ single copy. \$1.50 per year; foreign subscription \$2.10.

FL 2/12: 4/7

Same: Minimum requirements for New Jersey, Newark, N. J. Revised Jan. 15, 1940. Circular 2: (FHA Form 2245).

FL 24:2/pt. 6, N. J./940

-Insurance

Property standards /requirements for mortgage insurance under Title 2 of National Housing Act/; Minimum requirements for Arizona, Phoenix, Arizona. Revised Jan. 1, 1940. (Circular 2; FHA Form 2237). Federal Housing Administration.

FL 2.4: 2/pt. 6, Ariz/940

TITLES

Title closing; deeds, contracts, mortgages, with forms. by David C. Harvey. New York: Clark Boardman Co., Ltd., 1939. 434pp. Price ?

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